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# Report of the Commission

APPOINTED BY HIS EXCELLENCY.  
THE GOVERNOR OF THE

STATE OF COLORADO,

TO

REVISE THE LAWS OF THE STATE

REGULATING THE

APPROPRIATION,

Distribution <sup>AND</sup> Use of Water

WITH THE DRAFT OF A BILL PREPARED BY THE  
COMMISSION FOR ENACTMENT BY THE

GENERAL ASSEMBLY.

E. T. WELLS,      T. C. HENRY,      J. S. GREENE,  
COMMISSIONERS.

DENVER, 1890.

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DENVER, COLORADO,  
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*laws of the state regulating the appropriate  
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# REPORT.

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To the HONORABLE JAMES RICE,  
*Secretary of State,*  
*Of the State of Colorado:*

SIR:

The undersigned, who were appointed by His Excellency the Governor, in pursuance of the act of April 1, 1889, a Commission to prepare a code of laws concerning the waters of the State, respectfully report that having filed the oath of office, they entered upon their duties and have prepared a code for regulating the appropriation, distribution and use of water for all purposes, the adjudication of the priorities of right in respect thereto, the construction of drainage works, the appropriation and use of subterranean waters, for preserving record evidence of the title to waters, and other cognate subjects with as much particularity as it seems wise to the Commission to attempt.

Upon mature consideration of the subject it has seemed to the Commission that the ideas fundamental to the system heretofore in force in this State, to wit: That a right to the use of water may be acquired by the diversion and application thereof to beneficial uses that priority of appropriation ought to control; that unappropriated waters are public property subject to appropriation by all; that all persons and corporations diverting the waters of the natural streams for use wholly or in part by others, are public servants and subject to regulation, and that the rights of all persons entitled to divert water from the natural streams in each principal drainage basin may properly be ascertained and determined in one proceeding, and regulated by one controlling



authority, were founded in a wise consideration of the nature of the subject matter, and deserve perpetuation.

For the reasons above stated we directed our labors mainly to a revision and arrangement of the laws heretofore in force, with such changes and additions as seem to us requisite and advisable, and report the result in a code of sixteen articles, and provision for the repeal of all former legislation.

A brief statement of the more important changes and additional provisions suggested, and the reasons which have prompted us therein, may be proper.

### I.

The classification of the different uses of water in the the Constitution is manifestly imperfect. No explicit provision is made except for those using water for domestic purposes, for agricultural purposes and manufacturing purposes. There are evidently many uses of water which do not come within either of these classes: The supplying of range cattle is strictly pastoral, and not agricultural. The cultivation of fish is neither a domestic use, agricultural use nor a manufacturing use. The supplying of locomotive engines upon our railways can not, without a violation of language, be called a manufacturing purpose. Where in the Constitutional classification shall be placed the use of water for the operation of our placer mines, or for the extinguishment of fires, or for sustaining the trees upon the streets of our cities, or the grass or shrubbery in our public parks?

The preference accorded by the Constitution to those using water for domestic purposes over those claiming for any other purpose, and to those using water for agricultural purposes over those using it for manufacturing purposes, seems to be both exceptional and unnecessary. So far as we are advised there is no other jurisdiction in which these preferences have been established by fundamental law, and considering the exceedingly limited



amount of water applied to domestic purposes and to the operation of machinery, either stationary or movable, it has seemed to us that the provisions of the Constitution awarding this preference might be repealed without injury to any interest, and to the avoidance of much abuse. We have therefore reported separately from the rest of the work, a bill for amendment of the Constitution in this respect, which is also herewith respectfully submitted.

But to obviate as far as practicable the inconveniences and abuses resulting from the Constitutional preference in favor of domestic use, we have provided:

1. That the area about the house within which water may be supplied to the sustaining of the trees, flowers and shrubbery shall not exceed one-half acre. If the application of water to this purpose is to be deemed a domestic use, this limitation of area seems to be a reasonable one, and to some of the Commission it appears equally reasonable that such application of water ought to be classified as a domestic use. To some of us it seems that whatever pertains to the house and tends to add to its attractiveness and to promote the comfort of its occupants in reference to their occupancy of the house, ought to be regarded as a use pertaining to the house; that is a domestic use. The trees which shade it, the grass plat which surrounds it and the vine which adorns it are as necessary to the comfort of the family as the windows which afford light, or the chimney which carries away the smoke of its fires; and the propriety of this classification is sustained by the consideration that if the use of water for these purposes be denied, if all irrigation about the house be prohibited, if the trees, the grass and the shrubbery die, the attractiveness of our towns and cities which afford a market to the products of the farm and add to the value of the farms in a degree beyond estimation, will be destroyed. To one of the Commission it appears to be a dangerous

perversion of language to classify as a domestic use the irrigation of lands to any extent, or in any place whatsoever.

2. To prevent the abuse of the preference to domestic use, we have provided that the procuring of water under pretense of requiring the same for domestic use and afterwards applying the same to other use shall be deemed a misdemeanor punishable by fine, each day of the improper application to be a separate offense.

3. That water shall not be suffered to flow in open ditches for domestic use when resulting in unreasonable and disproportionate waste from seepage or evaporation. (Art. I, Sec. 6.)

4. We have also provided remedies by which any consumer of water may bring in question the action of any town or city in the diversion or storage of water and prevent excessive use, storage or waste.

## II.

The legislation of 1879 and 1881, providing for the adjudication of priorities of right, has been found to be defective in three particulars:

1. The adjudication in each Water District related solely to the rights of the appropriators within that Water District; the inhabitants of the other Districts were neither required, nor permitted to, nor, so far as we are advised, ever did, attend or participate.

2. No provision was made for the measurement and rating of the ditches and other works to which priorities were adjudged.

3. No person was appointed to represent the interests of the public.

It resulted that the amount of water to which the several proprietors of the works of diversion were entitled, was ascertained and determined in these decrees

by the interested conjecture of those proprietors; that almost invariably the amount awarded largely exceeded, sometimes three-fold, the carrying capacity of the ditch, and that the whole volume of the stream was absolutely adjudged to the junior appropriators upon the upper parts of the stream in proceedings to which the senior appropriators in the lower parts of the stream were not parties, where they had neither right nor opportunity to be heard. The decrees, therefore, instead of affording, as was intended, a just, true and absolute measure of the rights of all appropriators for irrigation, are in fact false and misleading even as to those who participated in the inquiry upon which they are founded, and absolutely void as to all others. In one of the Districts, as we are informed, the decree is so void of certainty, that the Water Commissioner in distributing the water among the appropriators is guided solely by his own knowledge in respect to the amount to which they are severally entitled.

It has seemed to the Commission highly desirable to terminate the confusion and uncertainty in which the rights of appropriators are thus involved. The present condition is, in some of the Districts, not without peril to the junior appropriators; for although it appears to the Commission very plain that the failure of those accorded priority in the decrees heretofore rendered, to use and avail themselves of the excessive amount mentioned in the decree as their right, amounts in law to an abandonment, nevertheless it is true that by an enlargement of the ditches of earlier priority to which the excessive amounts have been decreed, color of right may be asserted to carry and distribute the increased amount, and the opportunity thus afforded is liable to result in litigation injurious not only to the individual but to the community.

To remedy these abuses and obviate these dangers we have attempted to provide for a new adjudication in



each Water Division, in which the several priorities shall be recognized and established, according to date of appropriation, without reference to location in the division; and to the proceedings for which all inhabitants of the division and other parties in interest whomsoever shall be parties. To prevent the uncertainty which attended the former decrees we have provided for a measurement and rating of all ditches and works of diversion or storage, prior to adjudication, so that the capacity thereof may be accurately ascertained. We have also provided for the appointment of counsel to represent the public, and to perform the duty which the former legislation devolved upon the whole community, and which the whole community neglected.

Also for an accurate survey of each ditch and reservoir and the preparation of maps thereof, which having reference to the provision of the law that restricts the rights of the appropriators and consumers of water to their actual needs, seems almost indispensable to the intelligent distribution of the waters of the State. In order to prevent extortion in charges for the ratings and surveys, or the suggestion of official favoritism, we have provided that the State Engineer shall appoint all competent persons who may apply for the position Deputy Irrigation Engineers, with authority to make and certify the surveys and measurements and ratings required. These provisions coincide in the main with those contained in the acts of Congress for the mineral surveys; and it is believed that they will be found to operate in an equally satisfactory manner. If in the first instance the expense of the measurement and rating and survey should appear burdensome, the compensating benefit in the certainty of right so obtained will more than equalize it.

To prevent an unjust engrossment of the excessive amount decreed in the former proceedings, we have provided that the ditches mentioned in the former decrees

shall not be enlarged until rated and measured, and until renunciation by deed from the proprietors, duly recorded, of all excess in amount over that fixed by the rating.

### III.

As the law stands at this time, no record exists of the rights of any consumer of water. There is no public office to which any person making inquiry can resort for authentic information as to what amount of water any person is entitled to for the irrigation of his lands, or for the operation of any mine, mill, manufactory or other works. To remedy this, we have provided in the ninth article that by the first day of July next the proprietors of every ditch, conduit or reservoir supplying water for individual consumption, shall make and record in the office of the recorder of each county wherein the ditch may be situated, or wherein any part of the waters are used, a certificate setting forth the name of each person entitled to water, the date from which such person or his predecessors in interest began to use and enjoy the water, and the lands irrigated thereby or the other place where the same were used. Provision is also made for the falsification of this certificate by any person claiming to be entitled to water who is not therein mentioned, or who claims to be entitled to a greater amount of water than mentioned in the certificate, and for establishing the rights of the consumer where the proprietors of the diverting works fail to comply with the statute. We have also suggested provisions which declare, as we suppose to be the law now, that water used for the irrigation of lands or for the operation of works, or used with and necessary to the enjoyment of lands for any other purpose, shall be deemed appurtenant thereto and pass by conveyance of the lands, unless expressly excepted or reserved; that any person entitled to the use of water, changing the place or manner of its use, shall certify and put of record, evidence of the

change. It is believed that these provisions, if adopted, may, when time sufficient to give them full effect has elapsed, afford ample record evidence of the rights of all individual consumers.

#### IV.

It has been brought to the attention of the Commission that in some instances the proprietors of works of diversion have, perhaps owing to the uncertainties as to the amount of water to which they were entitled by the former decrees, and perhaps owing to other causes, granted to individual consumers the right to the use of water in excess of the aggregate of the amount of water which the ditch customarily carries. To remedy this abuse we have suggested provisions that any person claiming to be entitled to the use of water may implead the proprietors of the works from which water is taken, and all other consumers, and cause the total amount of water actually diverted and carried in the ditch and applied to beneficial uses to the amount reasonably sufficient and efficient for the uses to which it is applied, to be ascertained, and that those first using or enjoying the waters, to this amount, shall as among themselves be adjudged of equal right and priority; that all grants of the right to use or take water subsequent to this shall as against them be void; and that as to the grantees therein, such subsequent grants shall have effect as of the date when the water was actually applied to beneficial uses. It is believed that these provisions will have the effect to terminate many controversies and to establish the distribution of the water upon a more equitable and certain basis.

#### V.

The act of February 19, 1879, provides that no reservoir with embankments exceeding ten feet in height, shall be made without first submitting the plans thereof to the County Commissioners for their approval.

No penalty for the violation of the act is provided. Considering the immense number of works of this character heretofore constructed, and now in progress, and which will probably hereafter be constructed, and the great danger to life and property involved in the reckless and insufficient construction of such works, we have thought this provision insufficient to the occasion, and have suggested provisions requiring that before the construction of any such works, or any such embankment, the approval of the State Engineer should be obtained after inspection of the plan of the work, and, if necessary, official examination of the proposed site, and the character of the soil upon which the work is to be founded. We have suggested the enforcement of these provisions by the imposition of stringent penalties and by provision for the abatement of the works at the cost of the offending party.

## VI.

It is the opinion of many intelligent persons that by the alternation of the water to which many appropriators or consumers are entitled, so that upon one day, or several days, the whole thereof may come to the use of some of such appropriators or consumers, and on other days to others, the water can be made much more efficient for the irrigation of lands, and perhaps for other uses. This application of water is termed among practical men the "rotation of water." We have suggested provisions which will allow experiment in this direction by agreements between all or any part of the consumers from one ditch or between different ditches (with the consent of the consumers therefrom) which shall be for a limited time only, which shall not impair or in any manner disparage the rights of the parties thereto, and may be renewed or made perpetual as experience may show to be wise.



## VII.

The ease and facility with which water to which one person is entitled may be diverted to the premises of another, and the difficulty of detecting the offender has seemed to the Commission to render it wise to provide that the fact that upon two occasions within the same period of thirty days, water to which one consumer is entitled has been found flowing into the fields or works of another consumer, should be *prima facie* evidence of a guilty participation by the person profiting thereby on all subsequent occasions of such improper diversion. (Art. XIII, Sec. 3.)

## VIII.

It has occurred to the Commission that by the incorporation of the Water Districts and Water Divisions with an organization similar in some respects to the school districts, and with limited powers, the supervision of the distribution and use of water, the prevention of excessive use and waste might be much more efficiently conducted than under the present system. We have therefore framed a chapter relating to this subject and by which on petition of a limited number of the electors of any Water Division or Water District, an election may be held to ascertain the opinion of all. It has also occurred to the Commission that in case the Water Divisions should be incorporated it might be wise to confer power upon the directors thereof to agree with the prior appropriators in the lower parts of the Divisions and at a distance from the sources of supply, for the surrender of their priority, upon compensation made, and the subsequent distribution of the water in the discretion of the Board of Directors in the upper portions of the Division where the loss from seepage and evaporation will be least, and so that the water in descending the valley will everywhere be put to the service of man. Provision is also made that if this system should prove



upon experiment unsatisfactory, the Districts may of their own motion become dissolved.

## IX.

The laws now in force do not allow any variation in the maximum rates prescribed between classes of consumers. It has seemed to the Commission manifestly just that an increase in the rate should be allowed for an increase in the distance of carriage. Many of the ditches in the various Water Districts are many miles in length. For the service of those at the lower extremity the whole length of the ditch must be maintained, and justice seems to require that the carrier should be compensated therefor, and the burden should be thrown upon the persons receiving the service and not upon others. It seems reasonable also that those who consume water during the whole year, as for domestic uses, or for the operation of machinery, should pay a greater maximum rate than the farmer whose use ends with the season of irrigation, and that those who use water only occasionally and for short periods should pay a greater rate than those who are consuming during the whole year or the whole irrigating season.

There are also instances where the proprietors of the same works are entitled to water under distinct appropriations, as by original construction and by subsequent enlargement, and where those enjoying the water taken by the enlargement are frequently subordinated to prior appropriators by other ditches, and receive no water, or but a scant supply, at times when those enjoying the water taken by original construction have an abundance.

It has also seemed to the Commission that perhaps in some instances a variation in the maximum rate might reasonably be made where the same proprietor operates both reservoirs storing water and ditches diverting water directly from the stream.

We have framed provisions authorizing a variation in the maximum rate between the different classes of consumers in all those cases.

## X.

As the law stands at this time the duty and authority to fix the maximum rate to be charged by the carrier is devolved solely upon the County Commissioners in the county in which the water is used. In many cases it is believed the Commissioners have been directly interested in the question, sometimes as proprietors of the works, sometimes as consumers therefrom. Until this time also their determinations have been absolute, no appeal or other method of review of their errors being provided.

It has seemed to the Commission that an attempt, whether by fundamental or ordinary legislation to confer upon the proprietor of the works on the one hand, the absolute power of determining what he shall receive; or upon the consumer on the other, the absolute right to say what he shall pay for the service, is so manifestly unjust as to come within the denunciation of the Fifth Article of the amendments of the Constitution of the United States prohibiting the deprivation of life, liberty or property without due process of law. We have therefore suggested provisions allowing a change of the venue where any member of the Board of County Commissioners is in any case interested in the question of the rate to be fixed by the carrier, and for allowing an appeal to the Supreme Court.

We have prefixed to the work a table showing the former acts and the places where the same subjects are considered and have added an index to facilitate reference.

One member of the Commission is of the opinion that regulations, which to the others seem a departure

from the lines heretofore laid out, and which treat the application of water to beneficial uses as an appropriation of water and the diversion, conveyance or storage of water as a carriage of water and provide that no right of appropriation or carriage of water confers upon the carrier or appropriator thereof any right of sale or lease of such water, or right to make any charge therefor, save that for the carriage of such water, may be wisely enacted, and a separate report will be presented embracing these views.

We are gratified to report that of the appropriation of \$4,000 made for the expenses of the Commission, we have consumed less than eight hundred dollars.

Very respectfully,

Your obedient servants,

J. S. GREENE,

T. C. HENRY,

E. T. WELLS.

## TABLE

SHOWING WHERE THE SEVERAL FORMER ACTS ARE  
REITERATED, AMENDED OR REPEALED.

FORMER LEGISLATION.	WHERE TO BE FOUND IN THE BILL REPORTED BY THE COMMISSION.
Rev. Stat. 1868, Chapter 45, Sect. 1 . . . .	Not re-enacted because contained in the Constitution: Sec. 5, Art. XVI.
Sec. 2 . . . . .	Art. IV, Sec. 1.
Sec. 3 . . . . .	Art. IV, Sec. 2.
Sec. 4 . . . . .	Not re-enacted.
Sec. 5 . . . . .	Art. IV, Sec. 1.
Sec. 6 . . . . .	Art. IV, Sec. 1.
Sec. 7 . . . . .	Art. V, Sec. 15.
Sec. 8 . . . . .	Art. II, Sec. 1.
Sec. 9 . . . . .	Not re-enacted.
Sec. 10 . . . . .	Art. V, Sec. 13.
Sec. 11 . . . . .	Art. V, Sec. 14.
Sec. 12 . . . . .	Somewhat similar provision, Art. V, Sec. 14.
Acts of 1870, page 81, Sec. 1 . . . . .	Art. II, Sec. 5.
Acts of 1872, approved Feb. 5; Sec. 1, con- cerning irrigation in El Paso county; Acts 1872, p. 140 . . . . .	Not re-enacted.
An act to provide for the drainage of mines, approved Feb. 11, 1870. Acts, 1870, p. 82 . . . . .	Repealed; acts, 1872, p. 155.
Act approved Feb. 9, 1872; page 144; sec. 1.	Art. IV, Sec. 8, provides for the con- struction of a tail-race on the re- quirement of the State Engineer.
Act of Feb. 11, 1876. Acts, 1876, p. 78. . .	Provision against waste. Art. II, Sec. 3.
(Prohibiting the allowance of water to run in the summer season in any greater quantity than absolutely necessary for irrigating the lands of the pro- prietor and for domestic and stock purposes) . . . . .	Art. II, Sec. 3.
Sec. 3, penalty of \$100.00 . . . . .	Art. II, Sec. 3.
Act Feb. 10, 1876, p. 79. (Prohibits irriga- tion of meadow and hay land in Huer- fano county between 20th June and 31st August) . . . . .	Not repealed nor reiterated.
Act Feb. 19, 1879, (to regulate the use of water for irrigation, and for settling the priority of right.) Acts, 1879, p. 94.	



TABLE—CONTINUED.

FORMER LEGISLATION.	WHERE TO BE FOUND IN THE BILL, REPORTED BY THE COMMISSION.
Sec. 1, provides for fixing the rates to be charged for water for irrigation by the County Commissioners of the county in which the whole or upper part of the ditch shall lie . . . . .	Held unconstitutional by the Supreme Court.
Sec. 2 authorizes subpoenas for witnesses, examination, etc . . . . .	Art. VIII.
Sec. 3 provides that any person having purchased water for the irrigation of his lands and not having ceased to do so with the intent to secure water from some other source of supply, shall have right to continue purchasing . . . . .	Art. IX, Sec. 10.
Sec. 4 provides for apportionment of water among consumers where the ditch is not entitled to a full supply . . . . .	Art. VIII, Sec. 27.
Sec. 5 constitutes Water Districts . . . . .	
— to Sec. 15 . . . . .	Art. VII.
Sec. 15 . . . . .	Art. VII, Sec. 81.
Sec. 16. Water Commissioners to be appointed on recommendation of the Board of County Commissioners . . . . .	Art. VI, Sec. 26. Recommendation of the State Engineer.
Sec. 17. . . . .	Art. VIII, Sec. 29.
Sec. 18. . . . .	Art. VI, Sec. 36, except words "by order given to any assistant, sheriff or constable of the county in which the head of such ditch is situate."
Sec. 19 confers jurisdiction to settle the priorities of right in each Water District upon the District Court of that county in which the first regular term is held, etc . . . . .	Art. VIII, Sec. 1, confers jurisdiction on one District Court in each Water Division.
Sec. 20 requires appointment of referee to hear proofs; requires oath . . . . .	Art. VIII, Sec. 16.
Sec. 21. Notices in each Water District by publication of the time for commencing the taking of depositions . . . . .	Sec. 24. Notices required to be given by clerk.
Number of places to be such as the referee may select . . . . .	To be fixed by the Court.
Sec. 17 . . . . .	Art. VIII., Sec. 21.
Sec. 21. All persons claiming any interest shall attend at some one of the times and places fixed in the notice, and offer proofs . . . . .	Art. VIII., Sec. 15.
Sec. 21. Power to administer oaths and issue subpoenas for witnesses and subpoenas <i>duces tecum</i> , which shall be served by any sheriff, deputy or constable, or by any party . . . . .	Art. VIII., Sec. 26.
Permit all witnesses to be examined by the party or counsel . . . . .	Art. VIII., Sec. 15.

TABLE—CONTINUED.

FORMER LEGISLATION.	WHERE TO BE FOUND IN THE BILL REPORTED BY THE COMMISSION.
Reduce testimony to writing. Note all objections. Certify all books and papers; or make copies if not under the control of the party desiring their testimony . . . . .	Art. VIII., Sec. 26.
Sec. 22. . . . .	Art. VIII., Secs. 55 and 56.
Sec. 23. . . . .	Art. VIII., Sec. 37.
Sec. 24. . . . .	Art. VIII., Sec. 26.
Sec. 25. . . . .	Art. VIII., Sec. 31.
Sec. 26. . . . .	Art. VIII., Sec. 32.
Sec. 27. . . . .	Art. VIII., Sec. 25.
Sec. 27. . . . .	Art. VIII., Sec. 27. No provision for an abstract of the testimony by the referee.
Sec. 28. Persons refusing to appear before the Referee and make proof of their claims are forever barred, unless upon cause shown before the entry of the final decree they shall obtain a rule. All others who have made proofs to present their evidence, etc. . . . .	Not re-enacted. Art. VIII., Sec. 33, prohibits a decree save according to testimony; Art. VIII., Sec. 36, allows claimants who have failed to present their proofs through excusable neglect, to be heard upon a showing; Art. VIII., Sec. 48, allows suits by any person for establishing his right. No injunction to be allowed in any such suit. Art. VIII., Sec. 49, after the lapse of four years from the entry of the final decree, persons who have not entered any suit are forever barred from setting up any claim against the decree.
Sec. 29. Requires the Governor upon creating a Water District to notify the Judge of the District Court, and requires such Judge to appoint a Referee.	Not re-enacted.
Sec. 30. Court to examine testimony without unnecessary delay and enter a decree . . . . .	Art. VIII., Sec. 33, allows subpoenas to be taken by any party within thirty days from the filing of the report—allows a further reference or the Court to hear testimony in open Court. Requires the Court to enter its decree.
Court to order that each party have a certificate from the Clerk showing the date and amount of his appropriation, which certificate the claimant shall exhibit to the Water Commissioner. The Water Commissioner to keep a book and enter a brief statement of all such certificates . . . . .	Not re-enacted. Art. VIII., Sec. 15, Clerk of the District Court to certify copies of the decree to the State Engineer. Art. VI, Sec. 34, State Engineer to prepare a register of the priorities for the Water Division, and transmit copy to the Superintendent of Irrigation, and a like table for each Water District to the Water Commissioners.
Certificate may be recorded in the county records . . . . .	Not re-enacted. Fees of referee prescribed. Art. VIII., Sec. 51.
Sec. 32. . . . .	Art. VIII., Sec. 38.
Sec. 33. Power to allow re-argument . .	Art. VIII., Sec. 39.
Sec. 34. . . . .	Art. VIII., Secs. 40 and 47.

TABLE—CONTINUED.

FORMER LEGISLATION.	WHERE TO BE FOUND IN THE BILL REPORTED BY THE COMMISSION.
Sec. 35 . . . . .	Not re-enacted.
Sec. 36 . . . . .	Art. VI, Sec. 26.
Sec. 37 . . . . .	Art. IV, Sec. 7.
Sec. 38. Provision authorizing the construction of reservoirs and the storage of unappropriated waters.	Art. II, Sec. 7.
Authorizing the condemnation of land, etc	Art. III, Sec. 1.
Reservoirs or embankments exceeding ten feet not to be constructed without approval of the County Commissioners.	Art. IV, Sec. 1.
Sec. 39 . . . . .	Art. III, Sec. 5.
Sec. 40. Makes the owner of the reservoir liable for all damages from leakage, overflow or breakage, whether negligent or not . . . .	Art. IV, Sec. 15, imposes liability only in case of negligence or willful violation of the law.
Sec. 41. . . . .	Art. V, Sec. 27.
Sec. 42. Water Commissioners not to begin work until called on by two or more proprietors of ditches in writing . . . . .	Art. V, Sec. 31. Water Commissioners not to assume their duties until called thereunto by the State Engineer Superintendent of Irrigation or two or more Superintendents of Ditches or Canals or Reservoirs.
Sec. 43 . . . . .	Art. VIII, Sec. 52.
Sec. 44 . . . . .	Art. V, Sec. 32. Art. XIII, Sec. 1.
Act of Feb. 23, 1881, Sec. I . . . . .	Art. VIII, Sec. 13.
Sec. 2 . . . . .	Not re-enacted.
Sec. 3 . . . . .	Not re-enacted.
Sec. 4. Provision requiring petition to the District Court praying the appointment of a referee, etc., and the hearing of testimony . . . . .	Art. VIII, Secs. 14, 17, 19 and 26.
Direction for a decree establishing the several priorities of right, etc . . . .	Art. VIII, Sec. 34.
Certificate from the Clerk showing the date and amount of appropriation in favor of any ditch, etc . . . . .	Not re-enacted.
Sec. 5. The holder of such certificate to exhibit the same to the Water Commissioner who shall enter in book, etc . . . . .	Not re-enacted; otherwise provided for.

## TABLE—CONTINUED.

FORMER LEGISLATION.	WHERE TO BE FOUND IN THE BILL REPORTED BY THE COMMISSION.
Sec. 6. Provides for a notice of the day appointed by the Court for hearing; publication of such notice and posting in ten public places . . . . .	In lieu of these provisions Art. VIII, Sec. 15, directs a time for hearing the petition to be fixed by the Court, and citation to be issued to the Water Commissioner, service thereof upon the Superintendent of each ditch which shall have filed the statement of claim of right. Publication thereof for at least thirty days in each Water District. And Sec. 16 of the same Article provides that every inhabitant of the State of Colorado and every other person interested shall be deemed party to the petition and entitled to appear.
Sec. 7. . . . .	Art. VIII, Sec. 46.
Sec. 8. . . . .	Art. VIII, Sec. 15.
Sec. 9. . . . .	Art. VIII, Sec. 34, provides for the entry of the decree, and the arrangement and numbering of the appropriations in consecutive order throughout the Water Division.
Sec. 10. Provides for the appointment of the referee in case the Court shall deem it impracticable to proceed in open Court. . . . .	Art. VIII, Sec. 17.
Sec. 11. Directs a notice to be given by the referee of the times and places where he will attend to hear evidence and the publication of such notice . .	Art. VIII, Sec. 25. Directs notice by the Clerk of the Court.
Sec. 12. . . . .	Art. VIII, Sec. 46.
Sec. 13. Provides that the referee shall attend at the times mentioned in the notice, and that all persons interested in person or by counsel may attend, etc.	Art. VIII, Secs. 16, 26, 28.
Sec. 14. . . . .	Art. VIII, Sec. 27.
Sec. 15. . . . .	Art. VIII, Sec. 38.
Sec. 16. . . . .	Art. VIII, Sec. 27.
Sec. 17. . . . .	Art. VIII, Sec. 32.
Sec. 18. . . . .	Art. VIII, Sec. 33.
Sec. 19. . . . .	Art. VIII, Secs. 26, 27 and 28.
Sec. 20. Requires the referee to make an abstract of the testimony and prepare a draft of the decree . . . . .	Not re-enacted.
Sec. 21. . . . .	Art. VIII, Sec. 34.
Sec. 22. . . . .	Art. V, Secs. 35 and 36.
Sec. 23. . . . .	Art. VIII, Sec. 34.
Sec. 24. . . . .	Art. VIII, Sec. 39.
Sec. 25. . . . .	Art. VIII, Secs. 36 and 37.
Sec. 26. . . . .	Art. VIII, Sec. 40.



TABLE—CONTINUED.

FORMER LEGISLATION.	WHERE TO BE FOUND IN THE BILL REPORTED BY THE COMMISSION.
Sec. 27. . . . .	Art. VIII, Sec. 41.
Sec. 28. . . . .	Art. VIII, Sec. 42.
Sec. 29. . . . .	Art. VIII, Sec. 43.
Sec. 30. . . . .	Art. VIII, Sec. 42.
Sec. 31. . . . .	Art. VIII, Sec. 43.
Sec. 32. . . . .	Art. VIII, Secs. 46 and 47.
Sec. 33. . . . .	Art. VIII, Sec. 29.
Sec. 34. . . . .	Art. VIII, Sec. 49.
Sec. 35. . . . .	Art. VIII, Sec. 50.
Sec. 36. . . . .	Art. VIII, Sec. 52.
Act to provide for the extension for the right of way for ditches, canals and feeders of reservoirs in certain cases, and require registration of all such hereafter may or be enlarged. Feb. 11, 1881 . . . . .	
Sec. 1. Provision authorizing the condemnation of lands for extending the head of any ditch, canal, etc., upwards . . . . .	Art. III, Secs. 1, 8.
The right of priority of taking water from such stream from such ditch to remain unaffected by reason of such extension . . . . .	Art. III, Secs. 1, 8.
Provided, however, that no such extension shall interfere with the complete use or enjoyment of any other ditch, canal or feeder . . . . .	Art. III, Secs. 1, 8.
Sec. 2. Requiring the sworn statement of size, capacity, course, etc., of ditches, etc . . . . .	Substitute adopted April 20, 1887. 1887, page 315.
Sec. 3. This act applicable only to ditches for irrigation . . . . .	Not re-enacted.
Act to punish breaking or disturbing gates or embankments of ditches, etc. Approved Feb. 12, 1881 . . . . .	
Sec. 1. . . . .	Art. XIII, Sec. 1.
Sec. 2. Justices of the Peace to have jurisdiction . . . . .	Art. XIV, Sec. 1.
Act relating to irrigating ditches and manner of construction. Approved Feb. 12, 1881 . . . . .	
Sec. 1. No parcel of improved land to be burdened with two ditches without the consent of the proprietor . . . . .	Art. III, Sec. 4.
Sec. 2. Ditches to be located on the shortest feasible route . . . . .	Art. III, Sec. 2.

TABLE—CONTINUED.

FORMER LEGISLATION.	WHERE TO BE FOUND IN THE BILL REPORTED BY THE COMMISSION.
Sec. 3. No person to prevent another from enlarging or using in common with him the ditch before constructed	Art. III, Sec. 4.
An act to provide for head-gates for irrigating ditches. Approved April 11, 1881 . . . . .	Art. IV, Sec. 6.
An act to amend "An act to regulate the use of water, etc., approved Feb. 19, 1879." _____, approved April 9, 1885 . . . . .	
Sec. 1. Water Commissioner to be allowed \$5, to keep a just and true account of the time, etc . . . . .	Art. V, Sec. 26.
An act to repeal Sec. 5 of an act to provide for the appointment of the State Engineer, etc. Approved April 1, 1885	
Secs. 1-27. Establish Water Districts . .	Art. VII.
Sec. 28. Testimony taken before any former referee may be introduced as evidence for the purpose of adjudicating priorities, etc . . . . .	Art. VIII, Sec. 33. Provides that such former depositions shall not be used as evidence save against the deponent or the person in whose behalf he was examined.
An act concerning irrigating, etc. Approved April 17, 1885 . . . . .	
Sec. 1. Provides for a Commission to make tests and experiments for settling and purifying the water used by stamp mills and smelters. . . . .	Not re-enacted.
An act to regulate the mode of fixing the rates of compensation to be paid for water furnished, etc. Approved April 4, 1887 . . . . .	Re-enacted with additions. Art. X.
An act providing for the appointment of superintendent of irrigation, etc. Approved April 4, 1887. . . . .	
Sec. 1. Governor to appoint a superintendent of irrigation for each Water Division . . . . .	Art. V, Sec. 17.
Term of office to be two years . . . . .	Art. V, Sec. 17.
Governor may remove in his discretion .	Art. V, Sec. 28.
No appointment to be made, except on petition of the Board of County Commissioners of some one of the counties, etc. . . . .	Not re-enacted.
Sec. 2 . . . . .	Art. V, Sec. 20.
Sec. 3 . . . . .	Art. V, Sec. 21.
Sec. 4 . . . . .	Art. V, Sec. 22.
Sec. 5 . . . . .	Art. V, Secs. 24 and 25.
Sec. 6 . . . . .	Art. V, Sec. 18.

TABLE—CONTINUED.

FORMER LEGISLATION.	WHERE TO BE FOUND IN THE BILL REPORTED BY THE COMMISSION.
Sec. 7. Superintendent of Irrigation to procure from the Clerk of the District Court a copy of every decree establishing priorities . . . . .	Art. V, Sec. 34.
Make proper register of priorities for the Division, and a list of all ditches, etc., its number in the Division, the number of cubic feet of water it is entitled to, etc. . . . .	Art. V, Sec. 34.
Sec. 8. May call out any Water Commissioner . . . . .	Art. V, Sec. 21.
May perform the duties of Water Commissioner . . . . .	Art. V, Sec. 21.
Sec. 9. Water Commissioners to report to Superintendent of Irrigation . . . .	Art. V, Sec. 37.
Amount of water coming into the District, etc. . . . .	Art. V, Sec. 37.
Superintendent of Irrigation to ascertain from the reports what ditches are not receiving their proper supply of water and order the ditch junior in priority to be shut down. . . . .	Art. V, Sec. 38.
Reports of Water Commissioners to the Superintendent of Irrigation to be filed and be kept in the office of the State Engineer . . . . .	Art. V, Sec. 42.
Sec. 10. Owner of ditch not receiving the amount of water to which it is entitled shall report to the Water Commissioner. . . . .	Art. V, Sec. 39.
Water Commissioner to report to the Superintendent of Irrigation. Superintendent to order ditch in any other water district receiving an excess to be shut down . . . . .	
Proviso—nothing in this act construed to interfere with the priority of domestic use . . . . .	Not re-enacted.
Sec. 11. Salary of Superintendent of Irrigation to be paid by the counties of his division . . . . .	Art. V, Sec. 19.
Fees of the Clerk of the District Court . .	Art. VIII, Sec. 52.
An act to amend section 42 of chapter 57 of the General Statutes. Approved March 15, 1889 . . . . .	
The Water Commissioner to be appointed to each Water District — from among the persons recommended by the Boards of County Commissioners.	Art. V, Sec. 26.
To give bond not less than one thousand dollars, nor more than five thousand dollars; amount to be fixed by the County Commissioners . . . . .	— amount to be specified by the State Engineer. Art. V, Sec. 29.
With not less than three sureties approved by State Engineer . . . . .	One or more sureties approved by the State Engineer. Art. V, Sec. 29.

TABLE—CONCLUDED.

FORMER LEGISLATION.	WHERE TO BE FOUND IN THE BILL REPORTED BY THE COMMISSION.
— to hold office until successor is appointed . . . . .	Art. V, Sec. 26.
Sec. 2. Governor to fill all vacancies . . .	Art. V, Sec. 28.
Governor may remove any Water Commissioner in his discretion . . . . .	Art. V, Sec. 28.
An act regulating the distribution of water, etc. Approved March 19, 1887 .	Art. V, Sec. 1.
Sec. 1. Proprietor of every ditch, etc., for irrigation to keep a flow of water therein sufficient to meet the requirements of all persons from April 15 to Nov. 1 . . . . .	Art. IX, Sec. 6.
Sec. 2 . . . . .	Art. IX, Secs. 6 and 7.
Sec. 3 . . . . .	Art. V, Sec. 44. Art. IX, Secs 8 and 9.
Sec. 4 . . . . .	Art. IX, Sec. 9.
Sec. 5. Water Commissioner, etc., failing to promptly measure out water according to the priorities of the several ditches in his Districts, etc., guilty of a misdemeanor . . . . .	Not re-enacted.
Prosecution of any act declared a misdemeanor by this act may be had before a Justice of the Peace . . . . .	Art. XVI.
Sec. 6. Act to define, prohibit and punish extortion. Approved April 4, 1889 . .	
Sec. 1 . . . . .	Art. IX, Sec. 1.
Sec. 2 . . . . .	Art. IX, Sec. 2.
Sec. 3 . . . . .	Art. IX, Sec. 3.
Sec. 4 . . . . .	Art. IX, Sec. 4.
Sec. 6 . . . . .	Art. IX, Sec. 5.
An act to provide for the protection of water rights, etc. Approved April 4, 1887 . . . . .	Not re-enacted.
An act to amend Sec. 2 of the "act to provide for the extension of right-of-way for ditches, etc." Approved April 20, 1887 . . . . .	Art. II, Secs. 11, 12, 13.
An act to establish and define priority of appropriations of water from sources other than natural springs. Approved April 17, 1889 . . . . .	
Sec. 1. Ditches for utilizing seepage or spring waters to be governed by the same laws relating to priority as ditches from running streams . . . .	Art. II, Secs. 1-8.
Proprietor of lands where seepage of spring water first arises to have the priority of right if the water be capable of being used on his lands . . .	Not re-enacted.



## A BILL

FOR

AN ACT PRESCRIBING REGULATIONS FOR THE APPROPRIATION, DISTRIBUTION AND USE OF WATER, THE CONSTRUCTION AND MAINTENANCE OF WORKS FOR THE DIVERSION, CONVEYANCE, RETENTION, STORAGE AND DISTRIBUTION OF WATER, THE CONDEMNATION OF LANDS FOR THE SITE AND WAY OF WORKS FOR SUCH PURPOSE AND FOR THE SITE OF PUBLIC MILLS, AND FOR ROADS AND WAYS THEREFROM, AND FOR DRAINAGE DITCHES, AND FOR THE CONDEMNATION OF WATER RIGHTS AND THE WORKS FOR THE CONVEYANCE, DIVERSION OR STORAGE THEREOF, FOR CERTAIN PUBLIC USES; REGULATING THE APPROPRIATION OF SUBTERRANEAN AND PERCOLATING WATERS AND THE SINKING AND MANAGEMENT OF ARTESIAN WELLS; PROVIDING FOR THE APPOINTMENT OF OFFICERS FOR THE SURVEY AND MEASUREMENT OF THE STREAMS OF THE STATE, AND THE SURVEY, MEASUREMENT AND RATING OF WORKS FOR THE DIVERSION OR STORAGE OF WATER, AND FOR CONTROLLING THE DISTRIBUTION OF WATER THROUGHOUT THE STATE AND THE SEVERAL WATER DIVISIONS THEREOF, DEFINING THEIR POWERS, PRESCRIBING THEIR COMPENSATION AND PROVIDING FOR THE PAYMENT THEREOF; PRESCRIBING REGULATIONS FOR ESTABLISHING RECORD EVIDENCE OF THE RIGHT TO THE ENJOYMENT OF WATER; REGULATIONS FOR ADJUDICATING THE RIGHTS AND PRIORITIES OF RIGHT OF THOSE DIVERTING, CARRYING OR STORING WATER FOR IRRIGATION IN THE SEVERAL WATER DIVISIONS; PROVIDING FOR THE EXPENSES OF SUCH ADJUDICATION AND FOR THE APPORTIONMENT AND PAYMENT THEREOF; PRESCRIBING REGULATIONS FOR ASCERTAINING THE RIGHTS OF PROPRIETORS NOT PARTICIPATING IN SUCH PROCEEDINGS, AND THOSE ENTITLED TO WATER FOR USES OTHER THAN THE IRRIGATION OF LANDS; DEFINING CERTAIN DOMESTIC USES AND PROHIBITING THE ABUSE OF THE PREFERENCE IN RESPECT THEREOF GRANTED BY THE CONSTITUTION; PRESCRIBING AND REGULATING THE POWERS OF CITIES AND TOWNS, AND CORPORATIONS SUPPLYING CITIES AND TOWNS AND THE INHABITANTS THEREOF IN APPROPRIATING OR ACQUIRING WATER FOR SUCH USES; PRESCRIBING THE DUTIES AND LIABILITIES OF THE CARRIERS OF WATER AND THE RIGHTS OF THE CONSUMERS THEREOF, AND REGULATIONS FOR ASCERTAINING, DETERMINING AND SETTLING THE RIGHTS OF SUCH CONSUMERS FROM ANY DITCH OR OTHER WORKS AMONG THEMSELVES; REGULATING THE FENCING OF DITCHES AND REQUIRING THE PROPRIETORS OF LANDS, IN CERTAIN CASES, TO GIVE PASSAGE TO THE OFFICIALS CHARGED WITH THE ADMINISTRATION OF WATER; DEFINING WHAT SHALL IN CERTAIN CASES BE DEEMED AN ABANDONMENT OF THE RIGHT TO WATER; REGULATING THE PROCEEDINGS OF THE BOARD OF COUNTY COMMISSIONERS IN PROCEEDINGS FOR DETERMINING THE MAXIMUM RATE OF COMPEESATION TO BE PAID FOR THE USE OF WATER; AUTHORIZING VARIATIONS IN THE MAXIMUM RATE BETWEEN CERTAIN CLASSES OF CONSUMERS, ALLOWING CHANGES OF VENUE IN SUCH PROCEEDINGS, AND APPEALS FROM THE COUNTY COMMISSIONERS, AND REGULATING THE SAME; AUTHORIZING THE PROPRIETORS OF DITCHES AND CONSUMERS THEREUNDER TO AGREE FOR THE ROTATION OF THE WATER AMONG THEM-

SELVES; PROHIBITING UNLAWFUL INTERFERENCE WITH AND MALICIOUS INJURY TO WORKS FOR THE DIVERSION, CONVEYANCE, STORAGE OR DISTRIBUTION OF WATER; DIVIDING THE STATE INTO WATER DIVISIONS AND WATER DISTRICTS, AUTHORIZING THE INCORPORATION OF SUCH DISTRICTS AND DIVISIONS AND PRESCRIBING THE POWERS THEREOF; AND PROVIDING PENALTIES FOR ITS VIOLATION AND REGULATIONS FOR ENFORCING SUCH PENALTIES, AND REPEALING CERTAIN DESIGNATED FORMER ACTS, AND ALL ACTS IN CONFLICT THEREWITH.

*Be it enacted by the General Assembly of the State of Colorado:*

In manner following; that is to say:

## ARTICLE I.

OF THE DIVERSION AND DISTRIBUTION OF WATER FOR DOMESTIC USES.

SECTION I. The phrase, "Domestic Purposes," as contained in the Constitution and in this Act, shall be construed to include among other uses the supplying of domestic animals kept with and for the use of the household, not exceeding the number exempt from execution; and the watering and sustaining of trees, grass, flowers and shrubbery about the house of the consumer within an area not exceeding one-half acre of land.

When the greater part of the waters diverted, collected or stored by any works have been, or shall be, customarily applied to the irrigation of lands, the proprietors of such works shall not, in the absence of valid contract thereunto, be required to deliver water for domestic uses merely, nor permitted so to do to the prejudice of any prior appropriator for irrigation.

If any person having procured water to be delivered to him or turned into any ditch, conduit or other works, wherefrom he is using or wont to use water, by pretense that he or other persons are entitled thereto, or requiring the same, for domestic uses, shall afterwards devote the said waters or knowingly suffer the same to flow to other than domestic uses, to the injury of others having a prior right to enjoy such waters for the same use, every person so offending shall be deemed guilty of a misde-



meanor, and on conviction thereof, shall pay a fine of not less than ten dollars and not exceeding three hundred dollars, in the discretion of the Court wherein conviction is had. Each day of such improper application of water obtained in the manner aforesaid shall be deemed a separate offense.

SEC. 2. Any person may at any time take water from any natural stream or open ditch, conduit or reservoir at any public road-crossing or at any place upon his own lands, or upon the lands of others, by license of the proprietor thereof, or without such license where such lands are uninclosed and uncultivated, for filling barrels or other vessels for his domestic uses.

SEC. 3. Every person resorting for the purposes aforesaid to any ditch, conduit or reservoir, shall be responsible that no injury be done to the embankment thereof or the fence enclosing the same, or other parts or appurtenances thereof, and that the waters thereof be not fouled or polluted by any animal by him driven thereto or watered thereat.

SEC. 4. The proprietor of any ditch, conduit or other works for the diversion, carrying or storage of water, may fence and enclose the same or any part thereof with a lawful fence and exclude all live stock therefrom. At all public and private road crossings free passage shall be left of convenient width and to the full width of the bridge constructed or required by law to be constructed thereat; as also at all public road crossings convenient opportunity for those passing thereat to dip or draw water from such ditch or canal by means of buckets; and at the rating flume and head-gate of every such ditch or canal the proprietors thereof constructing such fence shall establish and always maintain therein, gate-ways, or other convenient means of passage to the satisfaction of the Water Commissioner. Where any such ditch, conduit or other works passes through any open cattle range, the proprietors thereof erecting such

fences shall be required to leave and maintain convenient passage ways for the cattle grazing upon such range, and those attending the same, at convenient places, at least one in each three miles of the length of such ditch. The proprietor of any lands through which such ditch, conduit or other works may be constructed, shall be entitled to lay bridges across the same at his pleasure at any place or places upon his said lands, and to open such fences and set and maintain gates or bar ways at any such bridge or set cross-fences thereat; *Provided, however*, that no such proprietor of lands shall by means of such bridge or its appurtenances unnecessarily obstruct the flow of water in such ditch or canal, nor leave such ditch or canal at such opening accessible to live stock. Gates or other convenient means of passage shall be placed and maintained in such cross-fences on each side of the ditch or canal at every such bridge. The proprietors of such ditch or canal shall be entitled to take up such bridge or temporarily remove the same whenever necessary for cleansing, repairing or enlarging such ditch; but in every case shall, forthwith after completion of the work of cleansing, repairing or enlarging the ditch, replace the same, and in case of the widening of the ditch shall lengthen such bridge as may be necessary.

In case of disagreement touching the compensation to be paid by any person desiring to construct a private way across any such ditch or canal, the same shall be ascertained in the manner prescribed by the statutes regulating the exercise of the power of eminent domain.

SEC. 5. Any person entitled to the use of water for the irrigation of lands, may at his pleasure apply the water to which he is so entitled or any part thereof to the filling of covered cisterns, at his residence, for the domestic uses of such person.

SEC. 6. Save in the case of ditches or conduits supplying a town or city or the inhabitants thereof, and

maintained for that purpose, water shall not during the irrigation season be turned into or suffered to flow in any open ditch or conduit for supplying domestic uses, when to permit such flow of waters for domestic uses will result in unreasonable and disproportionate waste from seepage or evaporation.

SEC. 7. The authorities of any city or town or any person or corporation supply such city or town with water, may divert the waters of any natural stream and may, in the bed of any natural stream or other suitable place, sink wells or construct reservoirs, subterranean galleries, cisterns, filtering wells or other like works for collecting or storing water for the domestic uses of the inhabitants thereof, and may by means of ditches or canals or conduits, or by means of pumps or other works, raise, force and convey the said waters into such reservoir or other place of storage and distribute the same in such city or town for the uses thereof, and of the inhabitants thereof.

SEC. 8. The authorities of any city or town, or any corporation organized for supplying the same or the inhabitants thereof with water for domestic or sanitary purposes, or other purpose whatsoever, or any corporation organized for constructing, maintaining and operating a railway as a common carrier, or for constructing, maintaining and operating any public grist-mill, or any public mill or other works for the reduction or treatment of gold or silver bearing ores or other ores, for all who may resort thereto, may whenever it shall be necessary for the purposes of such corporation to take, appropriate or damage the works of any other person or corporation constructed or used for the diversion, retention or storage of waters, and the right of such person or corporation to the waters thereby diverted, conveyed, collected, retained or stored, or any part thereof, and the compensation to be paid for or in respect of the rights and properties so sought to be appropriated or damaged,



can not be agreed upon between such city, town or other corporation and the owners of the rights and properties so sought to be taken or damaged, and those entitled to the enjoyment of water therefrom, or such owners or persons entitled to the enjoyment of water from such works, or any of them, are or is incapable of consenting, or the name or residence of any such owner or person, be unknown, or any such owner or person entitled to the enjoyment of water from such works is a non-resident of the State, or can not be found, it shall be lawful for such city, town or other corporation to cause the compensation and damages in that behalf payable, to be ascertained in the manner prescribed in the laws regulating the exercise of the right of eminent domain. And every such city, town or corporation shall be entitled to the same orders, rules and other proceedings in the same case and of like effect as may be prescribed in such laws.

SEC. 9. No city or town nor any person or corporation supplying any city or town or the inhabitants thereof with water, shall be permitted to divert or store up the water of any natural stream, or take water from any works constructed for other purposes, in quantity greater than required by the reasonable needs of such city or town and the inhabitants thereof; nor shall such city, town, person or corporation suffer the waters so diverted or taken to unreasonably flow to waste.

SEC. 10. If any proprietor of any ditch, conduit or other works constructed for the diversion of water from any natural stream for purposes of irrigation or otherwise, or any person entitled to the enjoyment of water from such works, shall in writing represent to the Superintendent of Irrigation of the Water Division, or the Water Commissioner of the Water District wherein such ditch, conduit or other works may be situate, that any municipal corporation situate in such Water Division, or any person or corporation supplying water to such municipal corporation or the inhabitants thereof, is diverting,

or are or is wont to divert the waters of the same natural stream in unnecessary quantities, or collecting, storing up and detaining water beyond the reasonable needs of such municipal corporation or the inhabitants thereof, or that such city or town or other corporation or person is suffering water by it or him diverted or taken for the purposes aforesaid, to be used for other purposes, or to unreasonably go to waste, it shall be the duty of such Superintendent of Irrigation or Water Commissioner to cause to be instituted in the District Court, to which is committed jurisdiction for ascertaining the priority of right among the appropriators of water in such Water Division, an action to restrain such unnecessary diversion, retention or waste of water; *Provided, however,* That not more than one such action shall be instituted in any two years, to restrain the retention, diversion or storage of water in excessive quantity.

SEC. 11. Every such action shall be in the name of The People of the State of Colorado and shall be prosecuted by the Attorney General, and such special counsel as may be employed by the officer instituting the same. The reasonable fees of such special counsel shall, at the termination of the action be fixed by the Court and together with all other costs of the action be apportioned by the Court among the several counties of the Water Division, or those of them which to the Court shall seem interested in the question, in such proportions as to the Court shall seem fit, and shall, on the filing of a certified copy of the order fixing and allowing such fees of counsel and apportioning the same among the several counties be allowed by the County Commissioners of each of the several counties in the proportions and to the amounts fixed by the Court; *Provided, however,* That if judgment be given against the defendant costs shall be adjudged as in other actions.

SEC. 12. Any city or town or any person or corporation supplying water to any city or town, or the inhab-



itants thereof, may, at any time, but not oftener than once in two years, apply to the District Court to which, by this act jurisdiction is committed, for ascertaining and settling the priority of right among the appropriators of water in the Water Division wherein the source of water supply of such city or town shall be situate, to settle and determine the amount of water necessary for supplying such city or town and the inhabitants thereof and to establish its right in that behalf. One or more of the persons and corporations who shall have theretofore filed with the State Engineer the statement and certificate required by the thirteenth section of the eighth Article of this act, their heirs, successors and assigns shall be made parties defendant thereto; and all others in interest may be joined therein by the title "All other appropriators of water in the ----- Water Division;" and the Court may afterwards in its discretion allow any others of such appropriators who may apply, to be admitted and named as defendants in such action, together with the persons first named as aforesaid, and proceedings shall be had therein as in other actions.

SEC. 13. Every such action shall be defended by the Attorney General and such special counsel as may by him with the approval of the Court be employed for the purpose. The reasonable fees of such special counsel shall, at the termination of the action, be ascertained and fixed by the Court, and together with all other costs made or incurred in or about the defense of such action, be apportioned by the Court among the several counties of the Water Division, or those of them which to the Court shall seem interested in the question in the manner provided by section eleven of this Article.

SEC. 14. In every such action the form of process and pleadings and other proceedings shall be as prescribed by law in other actions; and the Court may, on petition of the officer causing the institution of such action, or his successor in office or of the defendants

therein, change the venue for like cause as in other actions. When the final decree is rendered therein, the Court to which the venue is changed as aforesaid shall cause a certified copy of such decree to be transmitted to the Clerk of the Court wherein such action was instituted, and such Court may proceed by attachment or other proper process for disobedience thereof, in like manner as if such decree had been given in that Court.

SEC. 15. In any such action the said District Court shall have power to cause the ditches and other works whereby waters are diverted from any natural stream, or collected or stored for the use of such city or town, or the inhabitants thereof, to be rated, measured and the capacity thereof ascertained, and to ascertain, fix and determine by its decree the needs of such city or town and the inhabitants thereof, during the two years next following the entry of such decree, and the amount of water reasonably necessary for supplying the same, and to restrain by injunction and other preventive process, the unnecessary diversion, storage or retention of water beyond the needs of such city or town or the inhabitants thereof, and may by attachment, sequestration or other process, enforce its decree in that behalf or punish any violation thereof.

SEC. 16. Any city or town, or any defendant named in any such action, or the officer causing any such action to be instituted, or his successor in office, may prosecute an appeal to, or writ of error from, the Supreme Court, to review the decree given in such action on like terms and in like manner as in other cases; *Provided, however,* That the bond in such appeal be in amount only sufficient to cover costs; and in case no appeal be taken from such decree by the officer causing the same to be instituted, or the defendants named in any suit brought by any city or town, or corporation supplying the same, with water, then and in either such case the proprietor of any ditch or other

works diverting water from the same natural stream or source of supply from which water is taken for supplying such city or town, or the stream to which such stream is tributary, may, upon sworn petition to the District Court or the Judge thereof wherein such decree was given, be allowed such appeal; or on like petition to the Supreme Court or any Judge thereof, any such person may be allowed a writ of error for reviewing the decree aforesaid, upon the same terms and conditions, and to be prosecuted in the same manner as hereinbefore specified. No such appeal or writ of error shall operate as or be made a *supersedeas*.

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## ARTICLE II.

### OF THE ACQUISITION OF THE RIGHT TO THE USE OF WATER.

SECTION I. Every inhabitant of the State of Colorado shall be entitled to divert, collect and appropriate, for use in this State, either by such person or others, the waters of any natural stream, or any spring, lake, pond, marsh or bog naturally discharging its waters into any natural stream, or waters seeping or escaping from any ditch, conduit or reservoir for conveying or storing water, saving the rights of prior appropriators of such waters, and the rights of those desiring to use the same for any preferred use. Natural lakes and ponds having no outlet shall be deemed parcel of the lands whereon the same may be situate, and only the proprietors of such lands shall be entitled to draw off or appropriate the same.

SEC. 2. The application of water to any beneficial purpose whatsoever shall be deemed an appropriation thereof, and shall entitle the appropriator thereof to the use of such water to the extent of such appropriation, saving the rights of prior appropriators thereof, and saving also the rights of those entitled thereto for any preferred use.



SEC. 3. No person being entitled to the enjoyment of water for any purpose shall use the same in excessive quantity or suffer the same to run to waste. And if any person using the water of any natural stream or other source of supply, shall by reason of his omission to maintain and keep the banks or other appurtenances of the works whereby the same are diverted, conveyed or stored, or other negligence, whatsoever, knowingly suffer such water to run to waste, or apply or use the same in greater quantity than necessary for his purposes, he shall be liable to a fine in not less than five dollars and not exceeding three hundred dollars, in the discretion of the Court wherein conviction shall be had.

SEC. 4. Any person having acquired title to the use of water for any purpose whatsoever, may change the place of diversion thereof, or the place, purpose or manner of use thereof, at his pleasure; *Provided, however,* That nothing in this act contained shall be so construed as to authorize any person entitled to the use or enjoyment of water to change the place of diversion or use thereof to the injury of any other appropriator; *And provided further,* That the proprietor of any ditch, canal or other works for the diversion, conveyance, retention or storage of water, or other person whatsoever, shall not be required to permit such waters to run in the same course or place, or be retained, stored or used in the same place, or for the same purpose, in order to give opportunity to any other person to enjoy the seepage from such works.

SEC. 5. When any person operating any mine, or exploring ground supposed to contain valuable mineral deposits, shall hoist, raise, or by any means discharge water from such mines or ground, or divert the same out of any natural channel, or whenever any person, for the mere purpose of draining lands, shall collect and drain water or discharge the water naturally contained or percolating in such lands, and permit the same to flow away

without applying the same to any beneficial use, such water shall be deemed and taken as derelict, and as part of the waters of such natural stream or channel into which the same is discharged, or whereunto the same flows.

SEC. 6. Any person who having acquired the right to the use or enjoyment of water shall for three years consecutively, or in the case of water applied to the irrigation of lands during three irrigating seasons consecutively, fail to apply such water to a beneficial use, the same shall be deemed to be abandoned, and if taken directly by such person out of any natural stream or source of supply be subject to appropriation; or if taken from any ditch, conduit or reservoir, the property of another, or other persons, or any corporation, may by the proprietor or proprietors of such works be thereafter delivered or supplied to the use of any other person; *Provided, however,* That the failure of the person entitled to the enjoyment of water to apply the same to the irrigation of his lands in any season, when by reason of excessive rain-fall, or other reason whatsoever, such irrigation is unnecessary, or when by reason of infancy or disability from sickness, or that said person is prevented from the cultivation of his lands, or the use of such water, by imprisonment, or by any prohibitory process of the law, or is kept out of the possession of his lands, or the works or place in respect whereof such waters have heretofore been customarily used, the failure or omission of such person to apply such water to beneficial use shall not be deemed an abandonment. Nothing herein or elsewhere in this act contained shall be construed to prohibit the courts from inferring an abandonment from non-user for a less period, where accompanied by acts or words manifesting a purpose in the mind of the person entitled to no longer avail himself of his right.

SEC. 7. Any person or corporation may, during the periods between the seasons of irrigation or in time of



floods, divert and take the waters of any natural stream, not theretofore appropriated, and collect and store away the same for future use by such person, or corporation, or other person or corporation whomsoever, during the same or next succeeding season, and the proprietors of any ditch, conduit or other works for the conveyance of water for the individual use of other persons than the proprietors of such works, having capacity therefor, shall on payment of the rate fixed by the County Commissioners therefor, or a reasonable rate, if no rate hath been fixed by the County Commissioners, carry such waters to the place of storage, or to the place upon such works nearest to the place of storage; *Provided, however,* That wherever the appropriators of water, from any natural stream, have, during seasons of scarcity beer wont to use and enjoy the flood waters thereof for the irrigation of their lands, and thereafter any person or corporation by means of reservoirs or other works shall have collected, retained or stored waters whereunto, or to any part whereof, such prior appropriators of the waters of such stream or the stream whereunto the same is tributary, are entitled, the Water Commissioner shall cause the gates of such reservoir or other works of storage to be opened so as to discharge and send down water so collected to the amount to which such prior appropriators are entitled; and no person shall be entitled to store up waters for use in the following season, when the same are necessary for use in the season then current.

SEC. 8. Any person entitled to the use of water for the irrigation of lands or other purposes whatsoever may, at any time while so entitled to the use thereof, collect and store the same up for use presently thereafter, and the failure to apply or use such waters during the period of such collection and storage shall not be deemed or taken to impair his right in that behalf.

SEC. 9. Wherever a person or corporation heretofore constructing any ditch, conduit, reservoir or other works

for the diversion, conveyance, retention or storage of water, or any enlargement of such works, hath proceeded with reasonable diligence in such construction, or the work of such enlargement, his appropriation shall be deemed to date from the commencement of such works; and the commencement of the survey, if any, for such ditch, conduit, reservoir or other works, or such enlargement, shall be deemed the commencement of such work or enlargement. If any person or corporation, hereafter constructing any such ditch, conduit, reservoir or other works, or any enlargement thereof, shall have caused the map, description and statement of capacity required by the eighteenth section of the fourth article, to be filed as therein required, and shall have proceeded with reasonable diligence in the prosecution of the work of constructing such works, or enlargement, such person or corporation shall be deemed and taken to be entitled to the way, route and course proposed for such works, and to divert, have and enjoy the waters thereby proposed to be taken, collected or stored, as of and from the day of commencing the work of such construction or enlargement; or if such map or descriptive statement be not filed as in the section aforementioned prescribed, within ninety days after the commencement of such work of construction or enlargement, such person or corporation shall be deemed and taken to be entitled to the way, route and course proposed for such works, (so far as not by him or them actually occupied) and to have and enjoy the waters proposed to be diverted, carried or stored by means of such works, (so far as not thereby actually appropriated) as of the date at which such map and statement shall be filed in the office of the State Engineer; *Provided*, That then, or within a reasonable time thereafter, duplicates of such map and statement may be filed in the offices of the County Clerks of the several counties wherein the said works are proposed to be constructed, and not sooner.

The appropriation shall in every case be deemed and taken to be accomplished and effectual only as to so much water as shall have been actually applied to beneficial uses within a reasonable time after the commencement of such works, or afterwards where no appropriation has in the meantime been initiated by others, together with the reasonable amount necessary to supply losses by waste, seepage and evaporation; all the residue of the water within the capacity of the canal or other works shall be deemed to be derelict, and liable to appropriation by any subsequent appropriator.

ARTICLE III.

OF ACQUIRING LANDS FOR THE SITE AND WAY OF WORKS FOR THE DIVERSION, STORAGE OR CARRYING OF WATERS.

SECTION 1. Any person or corporation, inhabitant of this State, desiring to construct a ditch, conduit or other works for diverting or conveying water to be applied to domestic, agricultural or other uses, or any dam, dike, reservoir, subteranean gallery, filtering well, or other works for collecting, cleansing, filtering, retaining or storing water for any such use, or to enlarge any such ditch, conduit or other works; or to change the course thereof in any place, or to re-locate the head-gate or change the place at which water is to be taken into such canal or other works; or to enlarge any ditch, canal or other works theretofore constructed by any other person or corporation; or to construct any ditch, or lay pipes or conduits for conveying or distributing water so collected or stored to the place of using the same; or to set, place or construct a wheel, pump or other machine or apparatus for raising water out of any stream, lake, pond or well, so that the same may flow or be conveyed to the place of using the same, and who being lawfully entitled to construct, maintain or operate such works, shall be unable to agree with the proprietor of any lands necessary to be taken for the site or way of such works, or



any thereof, touching the compensation and damages which ought to be paid in respect of any lands taken or damaged by the construction and operation of such works, or any such enlargement thereof, either by reason of the refusal of such proprietor, or by reason that such proprietor is an infant, *non compos*, absent from the State, or cannot be found, may cause the damages and compensation to be paid in that behalf to be ascertained in the manner prescribed by the laws regulating the exercise of the right of eminent domain, which are or may hereafter be in force, and shall be entitled to all rules, orders and other proceedings whatsoever prescribed by such laws.

SEC. 2. Any such person or corporation desiring to construct or enlarge any ditch, conduit or other works for diverting, conveying, retaining, storing, cleansing or distributing water, shall be entitled to condemn and take for the purpose only such width or quantity of lands as may suffice for the location and construction of such works, or such enlargement thereof, and the subsequent maintaining, cleansing, repairing and improving thereof, as may be necessary from time to time; and every such ditch, conduit or other works for the conveyance of water shall be located along the shortest and most direct route upon which the proposed work can be reasonably constructed, so as to discharge the water at the place proposed for the use thereof, or at some point where it can be conveniently conveyed to such place.

SEC. 3. Where any person or corporation hath constructed a ditch, conduit or other works for diverting or conveying water, and the fall of such water therein is at any place sufficient to afford power for the operation of machinery, such person or corporation shall be entitled to condemn and take for the erection of a public mill or manufactory at the place of such fall, or convenient thereto, for the service of all who shall resort thereto, such amount of land as may be necessary for the location

and construction of such mill or manufactory, and the necessary appurtenances thereof; and the proprietor of such mill or manufactory may at any time afterwards, if for the utilization of such power for like public purpose, the enlargement of such mill or manufactory, or the appurtenances thereof, be required, in like manner condemn and take other lands necessary for such enlargement; and lands may be condemned and taken in like manner for the tail-race for turning such waters into such ditch or conduit next below the said mill or manufactory, and for the roads and ways necessary for passing between such mill or manufactory and the nearest convenient highways. Such roads shall, however, be located, so far as practicable, upon the lines of the public land subdivisions, and in all cases so as not to occasion unnecessary injury or inconvenience to the proprietors of such lands.

SEC. 4. No parcel of land shall, without the written consent of the owner thereof, duly acknowledged as deeds conveying lands are required to be, be subjected to the burden of two or more ditches or conduits constructed for the purpose of conveying water over or through the said lands to any place or places beyond the same, when the same object can feasibly and practicably be attained by conveying all the water necessary to be conveyed through or across such lands in one channel, ditch or conduit. In every such case the person or corporation desiring to cause the enlargement of the ditch or conduit first constructed, may, if for any reason no agreement can be arrived at, exhibit in the proper Court his or its petition for the ascertainment of the damages to be occasioned by such enlargement, against both the proprietor of the ditch or other works first constructed, and the proprietor of the lands over which the same were constructed, and the damages which they may severally sustain by such enlargement and subsequent use of such works, shall be ascertained



in one proceeding, and the final rule to be entered in such case, upon payment of the damages so awarded, may direct that the proprietors of such ditch or conduit first constructed shall within some certain time, to be limited in such rule, enlarge such works and the diverting dam, head-gate, rating-flume and other parts and appurtenances thereof, or any thereof, in manner as in such rule directed; and thereafter, upon payment of such annual rental at such time as may be ascertained or fixed in such rule, receive into the same at such place and in such quantity as may be specified in the rule, the water which shall be delivered thereinto by the petitioner, and convey the same through or along such works to such place or places as may be named in the rule, and there deliver the same to the petitioner, less by such amount as may be fixed by the Court for loss by seepage and evaporation; and such rule may direct a re-ascertainment at stated periods thereafter, of the loss by seepage and evaporation, and a re-ascertainment also at stated periods, of the rental payable in that behalf; *Provided*, No such ascertainment shall be had oftener than once in two years. And the Court may also by such final rule, or afterwards, provide and direct in case the proprietor of such ditch, canal or other works shall fail or refuse to enlarge the same in compliance with such rule, that the party desiring such enlargement may enter into possession of such works and cause such enlargement to be made, on first making compensation to the proprietor of such works, and the proprietor of the lands over which the same are to be constructed, of the damages which they may severally sustain by such enlargement and subsequent use of the works, or may appoint a receiver of the said works for such time as may be necessary to make such enlargement in conformity with the rule in that behalf.

SEC. 5. Any person may conduct water into and along any of the natural streams or channels of the

State, and may withdraw all such waters so by him turned into such channel, at any point desired, without regard to prior appropriations of water from said stream, due allowance being made for evaporation and seepage, to be determined by the Water Commissioner of the District, subject in all cases to an appeal to the Superintendent of Irrigation and the State Engineer; *Provided*, That any party in interest may apply to the District Court having jurisdiction to ascertain and settle the priorities of right among the several appropriators of water for such Water Division, to ascertain and fix by decree of such Court the amount of such evaporation and seepage; *And provided, further*, That wherever the proprietor of any lands through which any natural stream or channel passes shall refuse his consent to the use thereof by any other person for the conveyance of water not naturally flowing therein, the person desiring such use of such channel may cause the compensation to be paid in that behalf, and the loss by seepage and evaporation to be ascertained in the manner prescribed by the fourth section of this Article; and enlargement thereof may be directed as provided in the said section, if such enlargement be necessary.

SEC. 6. Where any ditch, conduit or other works for the diversion or conveyance of water, shall be proposed to be constructed through, along or across any street, avenue or alley in any city or town, damages and compensation in that behalf shall be awarded only to the proprietors of lots taken or damaged by the construction or maintenance of such works; but the person constructing such ditch, conduit or other works, or afterwards maintaining or operating the same, shall be subject to such regulations as the authorities of such town may reasonably prescribe for enclosing the excavation during the period of construction, or otherwise protecting the inhabitants of such town from injury by reason thereof, or for bridging such ditch or conduit at the

crossing of streets or alleys publicly used and traveled as such at the time of the construction of such ditch, conduit or other works.

SEC. 7. Any person who shall have enjoyed the use of the waters of any natural stream for the irrigation of any meadow or other land by the natural overflow, or other natural operation, of such waters, and by reason of the diminution of the waters of such stream, or the depression, deepening or other change of the channel thereof, the irrigation of such meadow or other lands therefrom, in as ample a manner as formerly, hath become or shall become impracticable, shall be entitled, within a reasonable time after such change, to construct a dam or other works in such stream for collecting or raising the waters thereof to the level of such meadow or other lands, or a ditch for conveying water from such stream to such meadow or other lands, and their right to take and use the waters of such streams by the means aforesaid, to the same amount and for the same periods only as prior to such change, shall be of the same priority and date as though such dam, ditch or other works had been constructed at the time he, she or they first enjoyed the waters of such natural stream for the irrigation of said lands; *Provided*, Nothing herein contained shall be deemed to impair the right of any person who appropriated the waters of such natural stream prior to the use thereof as aforesaid, for the irrigation of such meadow or other lands.

SEC. 8. In case the channel of any natural stream shall have become so cut down, lowered, turned aside, or otherwise changed, from any cause, as to prevent any ditch or conduit for the diversion of water, from receiving the proper inflow of water to which it may be entitled, the proprietors of such ditch or conduit may, within a reasonable time after such change, extend such ditch or conduit to such stream, or up along the course thereof, or may erect a dam, or embankment for turning



water into the same, and the right of such proprietors to take water from such stream through such ditch or conduit as so extended, to the same amount, and during the same periods as prior to such change, shall be of the same priority as before such extension; *Provided, however,* That no such extension shall be allowed in such manner as to interfere with the operation or enjoyment of any other ditch, conduit or other works for the diversion, conveyance or storage of water.

#### ARTICLE IV.

OF THE CONSTRUCTION AND MAINTENANCE OF WORKS FOR THE  
DIVERSION, CONVEYANCE AND STORAGE OF WATER.

SECTION I. Whoever shall propose to construct any dam, dyke or embankment for retaining or storing water, or to enlarge any such work theretofore constructed, so that the same shall have at any place a greater height than twelve feet, or retain or store a greater quantity of water than fifty acre feet, shall cause to be prepared and submitted to the State Engineer, drawings and specifications of the proposed work, showing the plan, elevation and principal sections of such work, the quality and quantities of the materials to be used in the foundation and superstructure of such proposed work and the appurtenances thereto, together with the manner of construction thereof, and all such matters of detail as the State Engineer may from time to time require.

Accompanying such drawings and specifications shall be a preliminary plat showing the location of such proposed work with reference to the public surveys, if the same be on or within two miles of surveyed lands, otherwise with reference to well known natural objects; the amount of water proposed to be collected, retained or stored by such works; the inlet, outlet or wasteways for such waters so far as the same can be conveniently shown; the water-shed, natural stream, ditch, conduit

or source of supply from which the waters proposed to be collected, retained or stored by means of such works are proposed to be taken, and such other matters as may be required by the State Engineer. The work shall not be proceeded with until such plat shall have been filed, and the State Engineer shall have in writing approved such drawings and specifications.

SEC. 2. The State Engineer shall, as speedily as may be, examine such drawings and specifications, and if he shall approve the same, affix his approval thereto and file the same in his office, and shall cause to be prepared and delivered certified copies of such drawings and specifications as approved by him, to the party proposing to construct such works. If the State Engineer shall disapprove such drawings and specifications, or either thereof, he shall return the same with his written objections thereto, to the party proposing the work. He may, if he shall deem it necessary, require the person or corporation proposing to construct or enlarge any such works, to cause excavations to be made to determine the character of the foundation therefor, and to cause a statement concerning the same, or concerning any other fact which may seem to him necessary to be known, to be certified to him by some Deputy Irrigation Engineer or Assistant State Engineer.

SEC. 3. Whoever shall construct such work without first securing the approval in writing of the State Engineer to the plans and specifications thereof, or shall construct the same otherwise than at the place shown in such plat, or in the manner designated in such approved drawings and specifications, or shall, without such approval, make any such enlargement of any such work before that constructed, shall be deemed guilty of a misdemeanor, and upon conviction thereof, pay a fine of not exceeding one thousand dollars, or be imprisoned in the penitentiary for not exceeding three years, or be punished by both such fine and imprisonment, in the discretion of the Court wherein conviction is had.



SEC. 4. It shall be a part of the judgment of conviction in every such case that the structure in question be abated as a nuisance by the sheriff of the county wherein the structure may be, and the cost of such abatement shall be taxed by the Court and judgment therefor given against the defendant.

SEC. 5. In case execution for such costs be returned unsatisfied, the same shall be paid by the Board of County Commissioners of the county wherein the work was constructed; or, if the same was situate in two or more counties, then by the Boards of Commissioners of such counties, in ratable proportion as the Court wherein conviction is had may direct.

SEC. 6. Every person or corporation hereafter constructing any ditch, conduit or other works, for diverting water from any natural stream, shall at the time of the construction thereof, construct and place therein a head-gate for excluding water therefrom, and regulating the flow of water therein. Every person or corporation owning or controlling any such ditch, conduit or other works heretofore constructed, wherein there shall be no such head-gate, shall construct and place a head-gate in such ditch, conduit or other works, within ninety days after the passage of this act; or if there be such head-gate and the same be out of repair or not of sufficient strength, nor so placed and arranged as to be efficient or satisfactory to the Water Commissioner, the proprietors of such works shall repair, replace, reconstruct or renew the same to the satisfaction of the Water Commissioner within such reasonable time, not exceeding ninety days, as may be specified by order in writing of the Water Commissioner, requiring such repair, replacement or reconstruction. Every person or corporation deeming himself or itself aggrieved by such order, in any respect, may appeal therefrom to the Superintendent of Irrigation for the Water Division and to the State Engineer. Every such person or corporation shall also whenever

thereunto required by order in writing from the State Engineer, construct at such place or places, and in such manner as may be designated or approved by the State Engineer, a rating flume or measuring device for rating or measuring the flow of water in such works, and shall always maintain the same in good order and condition to the satisfaction of the Water Commissioner; and shall put on such head-gate, a keyed device or lock satisfactory to the Water Commissioner whenever requested in writing by the Water Commissioner so to do, and shall upon request deliver one key thereof to the Water Commissioner.

SEC. 7. Every such head-gate shall be placed at or near to the head of such ditch or conduit, and shall be so constructed and arranged that the same may be set to exclude any part of the waters thereof, and of such dimensions and so designed and constructed, and so placed with reference to such ditch, conduit or other works and the embankments thereof as, when closed, to exclude the waters of such stream at all stages thereof.

Every such keyed device or lock shall be of such strength and so designed, constructed and placed as to permit the locking and fastening of such gate, valve or device at any point at which, as heretofore provided, the same may be set.

SEC. 8. Every person, association or corporation owning or controlling any ditch, conduit or other works for the conveyance of waters, the water discharged wherefrom hath been wont to, or probably may flood or damage any road, highway or public grounds, or the lands of other proprietors, shall whenever required thereto by order in writing from the State Engineer, construct a waste-gate and tail-race for discharging the waters of such ditch, conduit or other works into some other works for the conveyance of water, or into the stream wherefrom the same were diverted, or some other stream, ravine or water course, with as little waste or

damage to other proprietors as may be; *Provided*, That such tail-race shall not be so constructed, or placed, as to convey water into any other ditch, conduit, or other works, save by the consent of the proprietors thereof; and in every case the appropriator next in priority taking water from the same stream or source of supply, and whose ditch, conduit or other works lie below the place of discharge, shall be entitled to have such waste water; *Provided, further*, That nothing in this section contained shall be so construed, nor shall this section be so administered, as to disturb the order of priorities among the appropriators, or so as to effect the diversion into the works of one appropriator of water, to the use whereof another is entitled.

SEC. 9. Any person, association or corporation, who, being the owner of or controlling any ditch, conduit or other works for diverting water from any natural stream, shall fail or neglect to construct therein such head-gate for excluding the water therefrom and regulating the flow therein, or such rating flume or measuring device for rating or measuring the flow of water therein and determining the capacity thereof, as required by this act, or such waste-gate and tail-race when thereunto lawfully required in pursuance hereof, or to maintain any such structure in good repair and condition, or to renew and replace the same whenever thereunto required by the State Engineer, or to put and keep upon such head-gate a suitable keyed device or lock to the satisfaction of the Water Commissioner upon receiving a written order from the Water Commissioner so to do, or to deliver one of the keys thereof to the Water Commissioner upon request, shall be deemed guilty of a misdemeanor and on conviction thereof shall pay a fine of not less than ten dollars and not exceeding three hundred dollars, in the discretion of the Court wherein conviction shall be had.



Every person, association or corporation, who being convicted of any such offense, shall still persist in such omission or refusal, shall pay a fine of five dollars for each and every day of his or their default after the period of ninety days next succeeding such first conviction.

SEC. 10. The proprietors of any ditch, conduit or other works for diverting the water of any natural stream to be used in whole or in part for the irrigation of lands of others, shall by the fifteenth day of April in each year, cause such ditch, conduit, or other works to be properly and suitably cleaned and repaired, so that the same may conveniently carry the water to which the consumers of water therefrom are entitled, and such proprietors shall be liable for all damages occasioned such consumers by their willful or negligent failure to comply with the provisions of this section.

SEC. 11. If the proprietors of any ditch, conduit or other works for diverting water from any natural stream, shall fail or refuse to construct therein such rating-flume or measuring device for a period of thirty days after having been thereunto lawfully required so to do in pursuance hereof, the Water Commissioner of the Water District wherein such ditch, conduit or other works may be situate, shall close the head-gate of such ditch, conduit or other works, and prevent water flowing therein until such rating-flume or measuring device shall have been constructed and placed in such works to the satisfaction of the State Engineer.

If the proprietors of any such ditch, conduit or other works shall construct therein, next below the head-gate, a waste-gate, sand-gate or other opening, so that the whole of the waters of such works may be discharged therefrom, and shall place therein a gate which may be set and locked in like manner as above prescribed in respect of the head-gate, and shall deliver to the Water Commissioner one of the keys of such waste-gate, sand-



gate or other place of discharge, then and in such case, the Water Commissioner in lieu of closing the head-gate of such works, may open and lock such waste-gate, sand-gate or the gate of such other place of discharge, so as to waste and discharge the whole of the waters diverted by such ditch, conduit or other works, and return the same to the stream.

SEC. 12. If the proprietors of any ditch, conduit or other works for diverting the water of any natural stream shall refuse or fail to erect at or near the head of such ditch, conduit or other works the head-gate required by this act, or to maintain the same in good order as hereby required, the Water Commissioner of the District wherein such ditch, conduit or other works may be situate, shall whenever necessary in order to the distribution of the waters of the district in conformity with the Statutes, exclude the water of such stream from such ditch, conduit or other works by filling such ditch, conduit or other works at or near the head thereof, or by cutting the banks thereof, or in such other way as to him may seem effective, having due regard to the cost thereof; and the reasonable cost of such filling or other work, shall be paid by the Board of Commissioners of the county wherein the head of such ditch, conduit or other works may be situate, and may together with a reasonable attorney's fee, to be fixed by the Court, be recovered by such county in any Court of competent jurisdiction; and the judgment of the Court shall be a lien upon and against such ditch, conduit, or other works and the appurtenances thereof, and all right of the proprietors thereof, to carry or enjoy the waters diverted or carried thereby, and shall direct the sale of such ditch, conduit or other works, and the right of the proprietors aforesaid in satisfaction thereof, and such judgment may be enforced by special execution or other proper process. No such sale shall divest or impair the right of any person entitled to the use of water from such ditch, conduit

or other works by agreement with or license from the person or persons so in default, but all lawful fees and other sums of money payable by such consumer in respect to the carriage of water by means of such works shall thereafter be payable to the purchaser at such sale.

Every such sale shall be made as a sale of real estate, and redemption therefrom may be made in the manner provided by law in case of land sold on execution. Such proprietors so in default shall be liable for all injury and damages occasioned any consumer of water lawfully entitled thereto from such ditch, conduit or other works, by the willful or negligent failure of such proprietors to comply with the provisions of this act; and if any person, without first constructing the head-gate therein, as required by this act, to the satisfaction of the Water Commissioner, shall open any such ditch, conduit or other works after the same hath been filled by the Water Commissioner pursuant hereto, or shall repair or replace the bank thereof where the same hath been cut or opened by the Water Commissioner, or turn the water into such ditch, conduit or other works after the same hath been excluded therefrom by the Water Commissioner pursuant hereto, or having control of such ditch, or conduit, shall knowingly permit water to flow therein after the same hath been closed or the water excluded therefrom by the Water Commissioner pursuant hereto, every such person so offending, shall be deemed guilty of a misdemeanor and shall be fined in any sum not exceeding three hundred dollars, or imprisoned in the county jail not exceeding six months or punished by both such fine and imprisonment, in the discretion of the Court wherein such conviction is had.

SEC. 13. Any person who shall hereafter cause to be excavated or constructed, any ditch, conduit, reservoir or other works for the conveyance, collection or storage of water, shall during the excavation or construction of such works, keep open for safe and convenient travel,

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all public highways theretofore publicly traveled as such, where the same are crossed by such works, and shall before water is diverted into, conveyed or stored by such works, so as to extend into any such highway, construct to the satisfaction of the Road Supervisor, a substantial bridge not less than fourteen feet in breadth with proper and sufficient approaches thereto, over such ditch or conduit, or the waters of such ditch, conduit or reservoir which may extend into or across such highway or road. Every such bridge and the approaches thereto shall always thereafter be maintained by the county.

SEC. 14. If any person thereunto required by the preceding section, shall in any case fail, refuse or omit to construct such bridge or the approaches thereto, every such person and the directors and managers of any corporation delinquent in that behalf, shall be liable to a fine of not exceeding five dollars for each day of such default; and the Supervisor of the Road District may cause such bridge to be constructed, and the reasonable cost thereof, may, together with a reasonable attorney's fee, to be fixed by the Court, be recovered by the county in any Court of competent jurisdiction, and the judgment in that behalf shall be a lien on all right of the person in default in such ditch or other works, and may be enforced in the manner provided in section twelve of this article.

SEC. 15. The proprietors of every ditch, conduit or other works for conveying, retaining or storing waters, shall always maintain in good order and repair the embankment and all appurtenances thereof, so that the water conveyed, retained or stored thereby may not flood or damage the premises of others, or any highway, or unnecessarily run to waste, and shall be liable for all damages resulting from their willful or negligent failure to comply with any of the provisions of this act, or from their negligence in the construction, maintenance or operation of such works.



SEC. 16. The proprietors of every ditch, conduit or other works for conveying, retaining or storing water, shall permit the State Engineer, or any person appointed for the purpose by the State Engineer, or by order of the District Court, whereunto by this act is committed jurisdiction for settling and adjudicating the rights and priorities among the appropriators of water in the Water Division to at any time measure and rate such ditch, canal or other works. Every such order of appointment shall specify the ditch, conduit, reservoir or other works to be measured or rated, and the times within which such measurement may be made and the name of the person appointed, and shall be certified under the seal of the State Engineer, or the seal of such District Court. Whenever there shall be presented to the Water Commissioner of any Water District the order of the State Engineer or of any District Court, duly certified, as in this section above provided, directing the measuring and rating of any ditch, conduit or other works in his district, or whenever the proprietors of any such ditch, conduit or other works shall request of any Water Commissioner permission to fill such works for the purpose of measuring and rating the same in pursuance of the law, such Water Commissioner, notwithstanding anything in this act contained, shall cause or permit the head-gate of the ditch, conduit, reservoir or other works to be raised, and such ditch, conduit or reservoir, or other works to be filled, and so remain filled for a length of time sufficient to conveniently measure and rate the same; *Provided, however,* That the Water Commissioner shall not cause any such works to be filled at request of the proprietors thereof without the order of the State Engineer or the District Court aforesaid, when it shall seem to him unnecessarily injurious to others to comply with such request. The Superintendent and Manager of such works shall always on request, to the best of his ability, render assistance to such person named in such order of the State Engineer or such



District Court, in and about the measuring and rating of such works by admitting water into such ditch, conduit or works to the full capacity thereof if practicable, or by discharging the water out of such reservoir or other works of storage, when the same can be conveniently done without material loss to the proprietors or others, and by all other means in his power.

SEC. 17. The proprietor of any fence, which crosses or abuts upon any stream from which waters are drawn for irrigation or other purpose, or which abuts upon, or wholly or in part encloses any reservoir for the collection, retention or storage of water, shall cause to be placed in every such fence in some convenient place approved by the Water Commissioner, a gate or bar-way, and shall always maintain the same to the satisfaction of the Water Commissioner, and such proprietor, and the proprietors of lands shall always suffer and permit the State Engineer, his assistants, Deputy Irrigation Engineers, the Superintendent of Irrigation and the Water Commissioner, and their assistants, to pass thereat and along the bank of such stream, or to such reservoir over the premises of such proprietor by some reasonably direct and convenient way, for any lawful purpose connected with the discharge of their official duties. Every such person shall forthwith upon passing through any such gate or bar-way, carefully close such gate or set up the bars of such bar-way, and shall be responsible to the proprietors of such lands for any damage occasioned by his default in that behalf.

SEC. 18. Every person, association or corporation hereafter proposing to construct or enlarge any ditch, conduit or other works for the diversion of water from any natural stream, or for the purpose of collecting or utilizing the waters wasting or seeping from any other works, or any dam, dyke or embankment for collecting, retaining or storing the waters of any stream, valley,

ravine or water-shed, or any such waste or seepage water, shall within ninety days after the commencement of such construction or enlargement, file in the office of the State Engineer and in the office of the County Clerk and Recorder of each county wherein any part of the said works is proposed to be constructed, a map showing with reference to the lines of the public surveys, if on surveyed lands, and otherwise with reference to conspicuous and permanent natural monuments, the point of diversion, or head of such ditch, conduit or other works, the route of such ditch or conduit and all feeders thereof, and the site of all such dams, dykes, embankments and other works of storage, so as to fix with reasonable certainty the place of such structures. Upon or attached to such map shall be a statement showing the stream or source of supply from which water is proposed to be taken, or the valley, ravine or water-shed wherefrom or wherein water is proposed to be collected, the names of all persons proposing to unite in such construction or enlargement, or in case of a corporation, the name of such corporation, the name and address of the superintendent of such works, the depth, width, grade and carrying capacity of such ditch, conduit or other works of diversion or carriage and every feeder thereof, the depth of water proposed to be carried therein at full capacity, the form and area of the cross-section of water to be carried therein at full capacity, as proposed to be constructed or enlarged, the capacity of every such reservoir or other works of retention or storage when filled to high-water mark, the average depth of the water in such works of collection or storage, when so filled to high-water mark, and the lands to be covered by the waters thereof, the time of the commencement of the survey for such work, and the time of commencement of the actual work of construction, and in case of any proposed enlargement of such works, the increase of capacity to be obtained by such enlargement.

SEC. 19. Such statement shall be subscribed by the person or by some officer or the superintendent of the association or corporation in whose behalf the same is made, and affixed thereto shall be an affidavit of such person or officer that such map and statement truthfully sets forth the purposes of such person, association or corporation, touching the proposed construction or enlargement, and that the matters of fact contained in such statement are true.

SEC. 20. Every person or corporation proposing to construct works for the diversion, conveyance or storage of water, upon first filing in the office of the State Engineer a map of such proposed works and descriptive statement thereof showing the same matters required by the eighteenth section of this article, as also showing as nearly as may be the amount and character of the materials proposed to be moved in the construction of such works, and any other matter or thing proper to be considered in ascertaining the time which ought reasonably to be occupied in the construction of such works; and upon first publishing for not less than thirty days consecutively in at least one daily newspaper printed at the seat of government of the State, and at least one newspaper in each county wherein such works are proposed to be constructed, a notice of the time when application will be made to the State Engineer to fix the time for the completion of such works and the application of the water diverted, collected or stored by such works, may apply to the State Engineer to fix and determine the reasonable time for the construction of such works, and the application of the waters thereof to beneficial uses. And the State Engineer upon hearing such person or corporation and all persons who may attend to be heard touching the matter, may make an order fixing a reasonable time within which such works shall be completed, and a further reasonable time within which the waters thereof shall be applied to beneficial



uses, in order to entitle the proprietors thereof to priority as of the date of commencement of the work upon such structure. Before making such order, the State Engineer may, if he shall see fit, visit the site proposed for such works and make personal observation thereof and of the region proposed to be irrigated therefrom.

Every such order shall be entered of record by the State Engineer and a copy thereof delivered to the persons applying therefor, and if such works shall be completed within the time therein specified, and the waters diverted, collected or stored by means of such works, shall be applied to beneficial uses within the time specified in such order, the proprietors of such works shall be deemed entitled to priority as of the date of commencing the structure, which shall be the date of commencement of the survey, if conducted with reasonable diligence. Nothing herein contained shall be construed to exempt the persons or corporations constructing such works from proceeding with reasonable diligence with the work of construction; and the State Engineer may, if it shall appear to him at any time that any such persons or corporations have abandoned the proposed work or are refusing or failing to proceed with the construction thereof with reasonable diligence, revoke his said order in that behalf; subject, howsoever, to the right of the proprietors of such works to apply to him for rehearing in the matter of the order of revocation or to appeal to the Courts for relief against the same.

## ARTICLE V.

OF THE ADMINISTRATION OF THE WATERS OF THE STATE AND  
THE OFFICERS APPOINTED THEREFOR.

SECTION I. As soon as may be after the convening of the General Assembly at the ninth regular session thereof, and each alternate session thereafter, there shall be appointed by the Governor, by and with the advice



of the Senate, a State Engineer, who shall hold his office for the term of four years, and until his successor is appointed and qualified. No person shall be appointed to said office unless of known learning in the science of engineering, and of skill and experience in the practice thereof. The Governor may at any time in his discretion, for cause shown, remove the State Engineer, and in case of such removal, or the death or resignation of the incumbent, appoint a successor.

SEC. 2. The State Engineer before entering upon the duties of his office, shall take and subscribe the oath of office prescribed by the Constitution, and shall file the same in the office of the Secretary of State, together with his bond with one or more sureties approved by the Secretary of State, payable to the State in the penal sum of ten thousand dollars, and conditioned for the faithful performance of the duties of his office, and that he will well and truly account for and pay over, according to law all public moneys which may come to his hands, and deliver to his successor or other officer, authorized by the Governor to receive the same, all moneys, books, instruments and other property belonging to the State in his possession, or with which he may be legally chargeable.

SEC. 3. The State Engineer shall have his office at the seat of government in suitable rooms to be provided for him by the Secretary of State, who shall also provide suitable furniture therefor, and such proper and necessary instruments, books, stationery and postage as may be required to enable him to conveniently and efficiently discharge the duties of his office.

SEC. 4. The State Engineer shall have a seal which shall be provided by the Secretary of State, and shall attest therewith all orders and certificates issued from his office.

SEC. 5. The seal of the State Engineer shall be a disc, one and a-half inches in diameter, bearing in the center thereof a sheaf of wheat, and inscribed upon the circumference thereof the words, "State Engineer, Colorado."

SEC. 6. Any person who shall forge, deface or counterfeit such seal or affix any forged, corrupt or counterfeit similitude or imitation thereof to any writing or document whatsoever, or who shall illegally use or affix such genuine seal to any writing or document whatsoever, or who having in his or her possession or custody any writing or document whatsoever to which such forged, corrupt and counterfeit imitation of such seal shall have been affixed, or any writing or document to which the genuine seal shall have been illegally affixed, shall, knowingly publish, utter, use or present as true and genuine any such writing or document, or who having in his or her custody or possession, any such forged, corrupt or counterfeit seal or document, shall wilfully conceal the same, shall upon conviction thereof be punished at hard labor in the penitentiary for the term of not less than one year or more than ten years in the discretion of the Court wherein conviction shall be had.

SEC. 7. The State Engineer shall receive a salary of four thousand dollars per annum, which shall be paid monthly by the State Treasurer on warrants drawn by the Auditor of State, together with his reasonable traveling expenses necessarily incurred in the discharge of the duties of his office.

SEC. 8. He shall keep in his office a just and true account of all such expenses and all expenditures by him made in the discharge of his office, and upon his certificate showing particularly the time and occasion thereof, and on what account such expenditure was made, the Auditor of State shall issue his warrant upon the State Treasurer for the amount by him allowed in

respect thereof, which shall be paid out of the appropriation for the purpose, and not otherwise; and the salary or per diem and expenses of all assistants and the pay of all clerks and laborers and other necessary expenses of his office shall be allowed and paid in the same manner out of such appropriation.

SEC. 9. He shall have power to purchase, in the name of the State such material as may be necessary for constructing, maintaining and repairing gauging stations, at the streams required to be measured and gauged in pursuance of this act, and may sell and dispose of any such material in his discretion, when no longer needed.

SEC. 10. The State Engineer shall have general control of the survey and measurement of the streams of the State and of all works constructed for the diversion, retention or storage of waters, and of the distribution of water in the different Water Divisions and Water Districts, for irrigation and other purposes whatsoever. He may require of the Attorney General written advice upon any question of public interest arising under the laws of the State touching these matters. He shall keep in his office proper and full record of the measurements, observations and calculations made by himself or under his directions, and shall deliver the same, together with the reports of his Assistants and the Superintendents of Water Divisions, and the Water Commissioners, and Deputy Irrigation Engineers, and all other records, papers and properties, pertaining to his office, to his successor in office. He shall during the irrigation season or for such longer or shorter period as to him may seem advisable in each year, cause to be ascertained, as nearly as may be, the daily mean discharge of the principal streams of the State, (commencing with those most resorted to for irrigation) and shall cause a record of such daily mean discharge to be kept in graphic form, and as nearly as possible posted daily, and shall keep



such record always open to inspection at his office by those desiring to examine the same. He shall collect in each year information regarding the rain-fall in the different drainage basins of the State and, at the proper seasons, regarding the snow-fall in the mountains, for the purpose of ascertaining and predicting the probable flow of water in the streams in the ensuing season, and shall cause such information or the tabulated results thereof to be furnished from time to time to the newspapers of the State for publication. He shall also as far as practicable, cause to be collected, information touching all such other matters and things as may to him seem necessary or proper to be known for ascertaining the capacity of the streams and water courses of the State for supplying the needs of the inhabitants thereof, and for ascertaining the most economical and effectual methods of conserving, applying, distributing and using such waters; shall give his counsel and service whenever requested by the Governor to any officer, Department or Institution of the State, touching any matter of public concern, and perform such other duties as may be required of him from time to time by law.

SEC. 11. He may appoint one or more assistants, who shall be known as Assistant State Engineers, either to act generally under him or perform any particular service, and may revoke any such appointment at his pleasure. The State Engineer and the sureties in his official bond shall be responsible for all defaults and misconduct of all such assistants. Every such appointment and the revocation thereof and every appointment of Deputy Irrigation Engineers, and every revocation of such appointment, shall be in writing under the signature and seal of the State Engineer, and a copy thereof shall be filed in the office of the Secretary of State, and a record thereof shall be preserved in the office of the State Engineer, in a book to be kept by him for that purpose. Every person so appointed shall,



before entering upon the duties of his office, subscribe and cause to be filed with the State Engineer, the oath prescribed by the Constitution, and the State Engineer may require of every such Assistant State Engineer such bond and sureties as to him may seem fit.

SEC. 12. The pay of each Assistant State Engineer shall be not exceeding ten dollars per day for each day employed, together with his actual and necessary expenses; the same to be paid from the appropriation made for the purpose on the certificate of the State Engineer as above specified.

SEC. 13. The State Engineer and all and singular, his assistants and the Deputy Irrigation Engineers, shall in all calculations, measurements, records and reports, use the cubic foot per second of time as the unit of measurement of flowing water, and either the cubic foot or the acre foot as the unit of measurement of volume. The acre foot is the quantity of standing water which will cover one acre of land to the depth of one foot, and is equivalent to forty-three thousand, five hundred and sixty cubic feet.

SEC. 14. The State Engineer shall from time to time after the passage of this act, appoint all fit and proper persons who may apply to him for such appointment, as Deputy Irrigation Engineers of the State of Colorado. He shall subject every applicant for such appointment to examination sufficient to ascertain his qualifications and fitness for the position, and shall after any such appointment revoke the same, if it shall seem to him that the appointee is incompetent or unqualified for the discharge of the duties of his office, or has been guilty of corruption, extortion, unfairness or oppression therein.

SEC. 15. Every such Deputy Irrigation Engineer shall, before entering upon the duties of his office, take and cause to be filed in the office of the State Engineer

the oath prescribed by the Constitution, and shall file in the same office his bond to the State of Colorado in the penalty of two thousand dollars, with one or more sureties satisfactory to the State Engineer, and conditioned for the faithful discharge of the duties of his said office without favor, partiality or oppression.

SEC. 16. Every such Deputy Irrigation Engineer shall have such authority, and perform such duties as may be prescribed by law, and shall on request of the proprietor or superintendent or manager thereof, and on payment of his reasonable charges in that behalf, rate, measure and ascertain the carrying capacity of any ditch, conduit, lateral or feeder, or any enlargement thereof, and the capacity of any reservoir or other works for the conveyance or storage of water, and shall make and deliver to the person so employing him one or more certificates, as such person may require, setting forth the fact of such measurement and rating, and the time and circumstances thereof, and the capacity of such ditch, canal or other works as so ascertained, verified as hereby required. The State Engineer may at any time direct the measurement and rating of any such works. Any Assistant State Engineer or Deputy Irrigation Engineer rating, measuring or estimating the carrying capacity of any ditch, conduit, lateral, feeder, reservoir or other works for the conveyance or storage of water shall affix to the certificate of such measurement, rating or estimate of capacity, his affidavit setting forth that such measurement and rating was made by him, or such estimate of capacity, by himself and the other persons in that behalf named in such affidavit, the time thereof, and that the same truly sets forth the capacity of such ditch, conduit, lateral, feeder, reservoir or other works, as he verily believes. And any Assistant State Engineer or Deputy Irrigation Engineer who shall knowingly make any false certificate touching any measurement, rating or estimate of capacity of any such works, or touching

any survey of any such works or the notes, plat or map thereof, required by this act, shall be deemed guilty of a misdemeanor and be subject to a fine of not less than one hundred dollars nor more than one thousand dollars in the discretion of the Court wherein he is convicted. And if any such Assistant State Engineer or Deputy Irrigation Engineer shall knowingly swear falsely in any such certificate of measurement, rating or estimate of capacity, or in his certificate touching any survey of any such work he shall be deemed guilty of perjury and punished accordingly.

SEC. 17. The Governor shall appoint some fit person as Superintendent of Irrigation in and for each of the Water Divisions of the State. Every such Superintendent shall be a resident of the Water Division for which he is appointed, and shall hold office for the period of two years from the day of his appointment, and until his successor be appointed and qualified, unless sooner removed; *Provided*, That the first appointment of Superintendent of Irrigation in any Water Division shall not be made until the Governor shall think such appointment expedient and necessary; and in case of vacancy in said office in any Water Division the Governor shall not be required to fill such vacancy if he shall deem it inexpedient so to do.

SEC. 18. Every person appointed as Superintendent of Irrigation shall, within thirty days after his appointment and before entering upon the duties of his office, file in the office of the State Engineer the oath of office prescribed by the Constitution, together with his bond with one or more sureties, approved by the State Engineer, payable to the State in the penalty of five thousand dollars, conditioned for the faithful discharge of the duties of his office.

SEC. 19. He shall receive a compensation of five dollars per day for every day he is employed in the discharge of his duties hereunder, together with his reason-



able traveling expenses. He shall keep a just and true account of the time by him so employed and of such expenses, setting down the particulars of all expenditures charged for by him, and shall render such account, verified by his affidavit, to the State Engineer monthly or quarterly as he may elect; and such *per diem* and expenses shall be paid ratably by the several counties wholly or in part included within such Water Division upon the allowance and apportionment of the State Engineer. The State Engineer shall not allow or approve any item of such account which shall appear to him manifestly false or excessive.

SEC. 20. The Superintendent of Irrigation shall, within the Division for which he is appointed, have general control of the Water Commissioners within such Division, and shall, under the supervision of the State Engineer, execute the laws of the State relative to the distribution of water in accordance with the rights and priorities of appropriation in his Division, as the same are or may be established by judicial decrees; and perform such other duties as may be prescribed by law or by the State Engineer relative to the same matters.

SEC. 21. The Superintendent of Irrigation shall, subject to the approval of the State Engineer, have authority to make such regulations not in conflict with this act, or other law of the State, as to him may seem necessary or proper for securing in his Division the equal and fair distribution of water among those entitled thereto in accordance with their several rights and priorities of appropriation. He shall have authority to call out the Water Commissioner of any Water District in his Division at any time he may deem it necessary. In case of vacancy in the office of Water Commissioner, and at other times when he shall deem it necessary, he may assume and discharge any of the duties of the Water Commissioner, for any District of his Division.



SEC. 22. Any person, association or corporation deeming himself, themselves or itself injured or discriminated against by any order or regulation of the Superintendent of Irrigation in any Water Division, may appeal from the same to the State Engineer by filing with the State Engineer a copy of the order or regulation complained of, and a statement of the manner in which the same injuriously affects the person appealing, and serving upon the Superintendent of Irrigation a copy of such statement and a written notice of the time (not less than five days after such service) when such appeal will be presented to the State Engineer. The State Engineer may in his discretion adjourn such hearing until a later day to enable any party in interest to produce testimony touching the matter, and after hearing whatever testimony may be produced by the Superintendent of Irrigation, the party appealing or other party in interest, orally or by way of deposition, may confirm, suspend, repeal or modify the order or regulation complained of. Upon the hearing of such appeal or any other hearing before him touching any issue of fact in respect to the distribution of water, the State Engineer shall have power to administer oaths. The appellant or Superintendent of Irrigation or any party in interest, may cause depositions to be taken in any such matter, upon first giving notice in writing to the adversary parties, of the time and place of such examination, at least five days prior to the time appointed therefor. The State Engineer may if he shall deem it necessary, or advisable, visit the works of the parties interested before determining such appeal, or cause the same to be visited and inspected by some Assistant Engineer.

SEC. 23. The Court to which, by this act, is committed jurisdiction to determine the rights and priorities of the appropriators of water in any Water Division may, upon complaint of any person injured by the action of the State Engineer, Superintendent of Irrigation or the

Water Commissioner, in the distribution of water, give relief against the same, and nothing herein contained shall be construed to deny the jurisdiction of such Court in that behalf; *Provided, however,* That no injunction shall be allowed against the State Engineer, the Superintendent of Irrigation or any Water Commissioner to restrain them or either of them from doing any act or thing in the execution of his office, unless notice of the time and place of the application therefor, with a copy of the complaint and all affidavits proposed to be used in support of such application, shall have been served upon such officer at least six days prior to such application. Every person claiming to be interested in the question shall, on his application, be made party to such action. Costs shall not be taxed against the officer unless he shall appear to the Court to have been guilty of malice, gross neglect of duty, or willful oppression. The District Attorney of the Judicial District wherein the said action is brought shall defend all such officers, and his reasonable fees in that behalf to be allowed by the Court, shall be paid by such county or counties of the Water Division as the Court may direct, and in such proportions as may be fixed by order of the Court.

SEC. 24. The Superintendent of Irrigation shall commence the discharge of his duties whenever directed so to do by the State Engineer; and in default of such direction, as soon as the first Water Commissioner in any district within such division shall be called out, otherwise than by such Superintendent of Irrigation; and shall continue each season in the exercise of his office so long as the services of any Water Commissioner within his division are required, and ten days thereafter, and no longer.

SEC. 25. Each Water Commissioner when called out by the proprietors of canals, ditches or other works, shall report immediately by letter or telegram, to the

Superintendent of Irrigation for his Division, and shall also report when his services are no longer needed.

SEC. 26. There shall be a Water Commissioner in each of the Water Districts of the State who shall be appointed by the Governor from among the persons recommended to him by the State Engineer. He shall be a resident of the District in and for which he is appointed, and shall hold his office until his successor is appointed and qualified. He shall be entitled to five dollars per day for each day during which he shall be actually employed in the duties of his office. He shall keep a just and true account of the time employed by him in the duties of his office and render a true statement of the time so employed, verified by his oath, to the State Engineer, monthly or quarterly as he may elect, and the same shall be paid by the counties wholly or in part included within such Water District, in such proportion as to the State Engineer shall seem equitable, upon the apportionment and allowance of the State Engineer. The State Engineer shall not approve or allow any item of such account which shall appear to him manifestly false or excessive.

SEC. 27. Whenever the Superintendent of Irrigation shall recommend the appointment of an assistant or assistants to any Water Commissioner in his Division, the State Engineer shall, on request and nomination of such Water Commissioner, appoint such number of assistants to such Water Commissioner as he may think necessary, not exceeding the number recommended by the Superintendent of Irrigation. Every such appointment shall be in writing under the seal of the State Engineer, and shall specify the time during which the same shall be in force, and a record thereof shall be preserved in the office of the State Engineer. Such assistant shall take the oath of office prescribed by the Constitution, and shall in all things touching the execution of his office, obey the instructions of the Water Com-



missioner, and shall, subject to such instructions, have and exercise all the powers of the Water Commissioner. He shall be entitled to three and one-half dollars per day for each day during which he is necessarily employed, to be paid by the several counties wholly or in part within such Water District, upon certificate of the Water Commissioner, and the approval, apportionment and allowance thereof by the State Engineer, in the same manner as provided in respect of the Water Commissioner.

SEC. 28. The Governor shall fill all vacancies which may be occasioned by death, resignation or otherwise, in the office of the Water Commissioner in any District. The Governor may at any time remove any Superintendent of Irrigation or Water Commissioner, in his discretion.

SEC. 29. Every Water Commissioner shall, before entering upon the duties of his office, file in the office of the State Engineer the oath of office required by the Constitution, together with his bond in such sum not less than one thousand nor more than five thousand dollars, as may be specified by the State Engineer, with one or more sureties to be approved by the State Engineer, payable to the State of Colorado, and conditioned for the faithful discharge of the duties of his office.

SEC. 30. The State Engineer shall cause to be noted in a book to be kept in his office for the purpose, as to each bond, the amount thereof, the date of the approval thereof, the names of the principal and the several sureties therein. A copy of any such bond certified by the State Engineer under his seal of office shall be evidence in all Courts and places.

SEC. 31. The Water Commissioners shall not assume their duties until called thereunto by the State Engineer or Superintendent of Irrigation for the Division, or by



the Superintendents of two or more ditches, conduits, reservoirs or other works in their several Districts by application in writing, stating that there is necessity for their action. They shall not be entitled to compensation after the necessity for their services shall cease.

SEC. 32. The Superintendent of Irrigation in his Division, and every Water Commissioner and his assistants in their several Districts, shall, in respect to the distribution of water for irrigation, have the powers of a peace officer, and shall be authorized to arrest, with or without warrant, any person who shall violate any lawful order by him made in the administration of his office, or who shall, without authority of the State Engineer or the Superintendent of Irrigation for the Division, raise or open the head-gate of any ditch, conduit or other works, or suffer water to flow in such ditch, conduit or other works, contrary to the lawful orders of the Water Commissioner.

SEC. 33. As soon as may be after the entry of any decree hereafter made in any of the District Courts for adjudicating the rights and priorities of the several appropriators of water for irrigation in any Water Division, and within thirty days at the furthest after the entry of such decree, the Clerk of such Court shall make, certify and transmit a copy of the same to the State Engineer. In like manner whenever afterwards any modification of such decree shall be made, or any supplementary decree entered in the same cause, or any such subsequent decree establishing the rights of any appropriator, the Clerk of the Court wherein the same is made, shall certify and transmit a copy thereof to the State Engineer, and the fees of the Clerk for such copy shall be deemed part of the costs in the case and be paid in like manner as the residue of such costs.

SEC. 34. Whenever any decree shall be made in any of the District Courts to which by this act is committed jurisdiction to settle the priorities of right to the use of

water among the several appropriators of water in any Water Division, and a certified copy thereof filed in the office of the State Engineer, as by this act provided, the State Engineer shall cause to be prepared and always to be kept in his office, a book entitled: "A Register of Priorities of Appropriations of Water for Water Division Number ----," and shall cause to be entered therein and preserved all such copies of decrees, and shall as soon as may be thereafter prepare from such decrees a table of the ditches, conduits, reservoirs and other works for the appropriation of water for irrigation within such Division, arranging the same in consecutive order according to the priorities of the respective appropriations within such Division. Such table shall contain the following information arranged in separate columns: The name of the ditch, conduit, reservoir or other works; the Water District in which the same is situated; the stream or source wherefrom water is thereby diverted; the name of the person, association or corporation controlling the same; and the name and post-office address of the Superintendent upon whom, as provided by this act, notice in respect of the said works is to be served; the number of cubic feet of water per second, or, in the case of storage works, of acre feet, to which the proprietors thereof are thereby entitled, (the original appropriation and each enlargement being stated separately and in their proper order and place, according to the dates of appropriation); the total number of cubic feet per second of water previously appropriated, to be carried in ditches or conduits, and the number of acre feet previously appropriated for storage for irrigation in such Water Division; the number of cubic feet of water per second previously appropriated to be carried in ditches or conduits, and the number of acre feet appropriated for storage for irrigation in the Water District wherein such ditch, conduit or other works may be situate; and such other and further information as to the State Engineer may seem useful or necessary to enable the Superintend-

ents of Irrigation to make proper distribution of the waters of such Division according to such decree; and in case any decree shall be afterwards entered amendatory or supplementary to such decree, or any decree establishing the right of any person or corporation not in such first decree named, to the use of water for irrigation, or any decree establishing and limiting the amount of water to which any city or town or person or corporation supplying any city or town with water is entitled, he shall cause the substance thereof to be entered in such table in proper order and in the same manner aforesaid, and shall forthwith after the preparation of such table, or any amendment or supplement thereunto, cause a copy thereof certified under his seal of office to be transmitted to the Superintendent of Irrigation for the proper Division within which such decree shall have been entered. He shall also in like manner and forthwith, or as soon as may be, after the receipt of the certified copy of any such decree, cause a like table to be prepared for each Water District within such Water Division, setting forth the same matters in respect to the several ditches, conduits, reservoirs and other works in such Water District, and arranging the said several appropriations in such table, set down, according to their several respective priorities of right in said Water District, and shall certify and transmit a copy thereof and of each amendment or supplement thereunto under his seal of office to the Water Commissioner of such Water District.

SEC. 35. The Superintendent of Irrigation of each Division and the Water Commissioner of each Water District shall carefully preserve the said tables and return the same to the State Engineer for correction whenever required by him, and always at the end of the irrigation season. No claim of priority of right to the use or enjoyment of water for irrigation not set forth in the said tables shall be regarded by the Superintendent



of Irrigation or Water Commissioner in the distribution of water; and until all persons appearing by such tables to be entitled to the use of water for irrigation, shall have received the full amount to which, by such tables, they severally appear entitled, no other person shall be permitted to have, take or receive any water which might flow into the ditches, canals or other works set down in such tables; *Provided, however,* That nothing herein contained shall be so construed as to require the Superintendent of Irrigation or Water Commissioner to deliver to or suffer to flow into any ditch, conduit or other works, water manifestly in excess of the needs of the proprietors of such works or those entitled to the waters thereof, nor water to which by virtue of any agreement made in pursuance of the eleventh Article the proprietors of any other works are entitled.

SEC. 36. They shall cause the waters of the several streams and sources of supply in their respective divisions and districts to be distributed among the several ditches, conduits and other works in the said Water Divisions and Districts, respectively, in accordance with the said table as nearly as may be so that the proprietors of each of the said ditches, conduits or reservoirs, and those entitled to water therefrom, shall, as nearly as may be, and to the extent of their needs, at all times receive and enjoy the waters to which, as appears by the said table, they are severally entitled, and whenever it shall appear to any Superintendent of Irrigation or Water Commissioner that there is flowing into any ditch, conduit, reservoir or other works, water to which the proprietor of any ditch, conduit, reservoir or other works, having a prior right according to the said table, is entitled, and that such ditch, conduit, reservoir or other works having priority of right is not receiving the supply of water necessary for the consumers of water therefrom, and which, according to the said table, ought to flow to the same, he shall at once cause the head-



gate of such ditch, conduit or other works, having the excess, to be closed so that a sufficient amount of the water of such stream or source of supply may pass and flow to the ditch, conduit or other works having the priority of right to the amount to which according to such table the same is entitled; *Provided, however,* That the Superintendent of Irrigation or the Water Commissioner shall not cause any head-gate to be closed unless thereby the water may be given to some ditch, canal or other works having priority of right.

SEC. 37. Each of the Water Commissioners shall, whenever required thereunto by the Superintendent of Irrigation, and as often as practical, and at least once in each week during the irrigating season, report to the Superintendent of Irrigation of the Division touching the following matters: The total amount of water necessary for the irrigation of land actually cultivated in the said Water District; the amount of water at the time flowing into said District and whether such flow of water is increasing or decreasing; the ditch latest in priority which, if distributed according to the date of their priorities of right as set down in the tables aforesaid such amount of water will suffice to supply; the ditch latest in priority of right at that time receiving water and the amount which it is at that time receiving; the amount of water flowing out of the said District into the District next below the same; at what time and place next thereafter such Water Commissioner can receive instructions from the Superintendent of Irrigation, also touching any other matter upon which the Superintendent of Irrigation may require a report; *Provided, however,* That the Water Commissioner shall not be required, in order to ascertain or report touching any of these matters, to abandon or neglect other matters which shall seem to him to be of more importance unless by express direction of the Superintendent of Irrigation.

SEC. 38. The Superintendent of Irrigation shall file and carefully preserve all such reports, and forthwith after the receipt of any such report he shall carefully examine the same and shall therefrom ascertain what ditches, conduits or reservoirs in his Water Division are and what are not, receiving the supply of water to which they are severally entitled, and whenever it shall appear therefrom, or otherwise to his satisfaction, that any ditch, conduit, reservoir or other works, within such Water Division, is receiving any excess of water over and above the amount to which it is entitled under the decree of the District Court, and any ditch, conduit or reservoir in any other Water District, senior in priority thereto, is not receiving the full amount to which it is entitled, he shall forthwith, (by telegram if he shall deem it necessary) direct the Water Commissioner of the Division wherein such ditch, conduit, reservoir or other works, so receiving the excess may be situate, to close down the head-gate of such works, so as to allow such excess to flow to the ditches, conduits, reservoirs or other works which are the seniors in priority; *Provided, however*, That the Superintendent of Irrigation shall not be required to direct the closing of any head-gate where water can not thereby be given to the works having priority of right, the supply of which is insufficient.

SEC. 39. Until decrees shall be rendered in pursuance of this act for adjudicating the rights and priorities to the use of water for irrigation among the several appropriators in any Water Division, distribution shall be made as nearly as may be according to the decrees heretofore rendered in the several Water Districts having regard to the dates of the several appropriations within the Division, and without regard to the date or order of the several appropriations in the Water District; *Provided, however*, That nothing herein contained shall be deemed to validate any such decree, or make the same

obligatory upon or against those entitled to the use of water in any Water District, save that in respect whereof such decree was rendered; and where in any case the proprietors of any ditch, conduit or reservoir named in any such decree, shall, for the space of three years after the entry of such decree, have customarily failed to take, use and enjoy any portion of the waters to which by such decree they appear to have been entitled, the same shall be deemed to have been abandoned; and notwithstanding any such decree, such portion of any waters thereby awarded to the proprietors of any ditch, conduit or reservoir, not used and enjoyed for the space of three years after the entry of such decree, shall be distributed to the subsequent appropriators according to their several priorities of right as the same may have been or shall hereafter be established.

SEC. 40. Waters appropriated for other purposes than the irrigation of lands, and water appropriated for irrigation in any Water Division wherein, or in any Water District whereof, no decree hath been entered for settling the rights and priorities of the appropriators of water for irrigation, and waters appropriated for irrigation in any Water Division, subsequent to the appropriation last in priority in any such decree mentioned, shall be distributed by the Superintendents of Irrigation subject to the orders of the State Engineer as the rights of the several appropriators thereof may be ascertained and determined by the State Engineer from the best information accessible to him, reserving, however, to every person aggrieved, the right to apply for relief to the District Court whereunto, by this act, is committed jurisdiction for settling and adjudicating the rights and priorities of the appropriators of water in such Water Divisions.

SEC. 41. The State Engineer by the first day of April in each year shall cause to be made and transmitted to the Superintendent of Irrigation for each Water



Division, duplicate plats showing the land contained within each of the Water Districts in such Division according to the public land surveys, showing also, so far as the information in his office permits, the several ditches, conduits, reservoirs and other works in such Water District, devoted to the irrigation of lands, and the location of the several towns and railways, so far as the same can be ascertained. One copy of each of the said plats, the Superintendent of Irrigation shall retain in his office and one copy thereof he shall transmit to the Water Commissioner of the proper District. Each Water Commissioner shall preserve the same and cause to be noted thereon all corrections therein which seem to him necessary to be made, all ditches, conduits, reservoirs and other works within his District for the irrigation of lands, not appearing thereon, all such works set down upon such plat as active works, which have in fact been abandoned, or the waters whereof may have been turned into or consolidated with those of any other works, and all other matters and things which may be required by the State Engineer or may seem to him necessary to be known in order to the correction and perfection of such plat, and shall return the same by the fifteenth day of September in each year to the Superintendent of Irrigation, with a statement of all such corrections and other corrections and suggestions of matters of importance which appear to him necessary to be known and which cannot be set down on the plat. The Superintendent of Irrigation shall forthwith transmit the same together with the other copies of such plats, in his hands remaining, to the State Engineer, together with like corrections, additions and suggestions which may appear to him to be necessary or proper touching any Water District.

SEC. 42. The State Engineer shall, in each year, transmit to the Superintendent of Irrigation, blanks for the reports hereinafter required.



SEC. 43. The Water Commissioner of each District shall, at such time as may be fixed by the State Engineer, in each year, make his report to the Superintendent of Irrigation, setting forth with reference to each ditch or conduit in his District, the following particulars for the irrigating season last past or then current: The number of days during which water was carried; the average amount of water carried in cubic feet per second; the total number of acres irrigated therefrom; the number of acres of alfalfa, native grasses, seeded grasses, small grains, fruit trees, forest trees, and other products respectively, irrigated therefrom, as far as can be by him be conveniently ascertained. He shall also set forth a full account of his official doings as Water Commissioner during such season, and the number of days by him employed therein, and suggest any defects, uncertainties or imperfections in the law or the administration of the waters of the State, which seem to him necessary to be corrected. The Superintendent of Irrigation shall, at such time as may be fixed by the State Engineer, transmit to the State Engineer all such reports of the several Water Commissioners of his Division, together with his opinion thereon, and a report of his official doings during such season, and like suggestions touching the law and the administration thereof. The State Engineer may at any time require of the Water Commissioners and Superintendents of Irrigation, reports and opinions touching any other matters which may seem to him necessary or desirable to be known and practicable for such Water Commissioners or Superintendents of Irrigation to ascertain. Every Water Commissioner and Superintendent of Irrigation shall turn over to his successor in office all plats, instructions, tables of priorities, keys of head-gates and other properties in his possession pertaining to his office, and in case any Water Commissioner shall resign and quit his office before the appointment of his successor, he shall deliver the same to the Superintendent of Irrigation;

*Provided, however,* That no Water Commissioner shall quit his office or abandon the duties thereof without the consent of the State Engineer, until his successor be appointed and qualified.

SEC. 44. The State Engineer shall carefully preserve in his office all the reports of the Water Commissioners and Superintendents of Irrigation, and shall render to the Governor, at least thirty days previous to the convening of the General Assembly, at each regular session, reports of the administration of his office during the two years preceding, setting forth all such matters and things as shall to him seem necessary to be submitted to the General Assembly for their information, or for public knowledge.

SEC. 45. The proprietors of every ditch, conduit, reservoir or other works, for the diversion, carrying or storage of water for irrigation, shall, within thirty days after the approval of this act, cause to be chosen a Superintendent of such ditch, conduit or other works, upon whom may be served processes in actions wherein may be brought in question the right of such ditch, conduit, reservoir or other works, to the waters appropriated, carried or stored by means thereof, and all notices required by this act to be served upon the proprietors of such works in any proceedings for the adjudication of the rights and priorities to the use of water, among the several appropriators of the Water Division, and all notices from the State Engineer or Superintendent of Irrigation or the Water Commissioner, touching the administration of such works. They shall forthwith cause the name and address of such Superintendent to be certified in writing to the State Engineer, who shall preserve the same and forthwith transmit the name and address of such Superintendent to the Superintendent of Irrigation for the proper Division. The Superintendent of Irrigation shall transmit the name and address of every such Superintendent so appointed to the

Water Commissioner of the District wherein the said ditches, or other works, shall be respectively situated; and the Water Commissioner shall preserve in his office a record of the names of all such Superintendents so appointed, and the name of the ditch, conduit or other works in respect of which each appointment is made, and shall enter therein from time to time whenever the same shall be received, all changes in the names of such Superintendents.

SEC. 46. In case of the death, resignation or removal of any Superintendent from his office, the proprietors of every such ditch or other works shall forthwith choose some other person in his stead and certify his name and address in like manner to the State Engineer, who shall cause the same to be transmitted to the Superintendents of Irrigation to be by them also certified to the Water Commissioner of the proper District.

SEC. 47. Neither the State Engineer nor any Assistant State Engineer, Deputy Irrigation Engineer, Superintendent of Irrigation, Water Commissioner or Assistant or Deputy of such Water Commissioner shall be liable to any civil action for any act or omission in the administration of the duties of his office unless it shall manifestly appear that such officer in such act or omission, was guilty of corruption, malice or willful oppression.

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## ARTICLE VI.

PROVISIONS FOR ESTABLISHING AND PRESERVING RECORD EVIDENCE OF THE RIGHT TO THE ENJOYMENT OF WATER.

SECTION 1. Any person or corporation having acquired the right to divert, convey, retain, store or use water for any purpose whatsoever, may change the place, purpose or manner of use thereof, at his pleasure, or transfer his right in respect of such waters to any other person or corporation proposing to use the same within this State; and notwithstanding any such change



in the place, manner or purpose of the use of such waters, or such transfer, such person or corporation, his heirs or assigns, shall be entitled to the same priority and right in respect to the enjoyment of such waters as prior to such change, or such transfer, and whether the waters be devoted to the same or inferior use; *Provided, however,* That nothing herein contained shall be so construed as to authorize the proprietors of any such works to deny water therefrom to any person entitled thereto, nor so as to authorize one of the several proprietors of any ditch, conduit or other works for the diversion or conveyance of water, or any consumer of water from such works to divert or convey any portion of the waters of such ditch, conduit or other works, otherwise than by and through such ditch, conduit or other works, or to transfer or set over to any other person such right.

SEC. 2. The right to the enjoyment of water for the irrigation of lands, or for the operation of any mill or mine, manufactory, or other machinery, or for other purpose whatsoever, in respect of the use or enjoyment of lands, shall be deemed real estate, and no estate or interest therein, (other than demises for terms not exceeding one year), nor any trust in, or power over the same shall be created, granted or assigned, surrendered or declared, unless by operation of law, or by conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or his attorney in fact thereunto duly authorized; and every agreement for the sale, transfer or assignment of any such right to the use of water, or for the demise or leasing thereof for a period greater than one year, shall be void unless such contract or some note or memorandum thereof, expressing the consideration, be made, in writing, and subscribed by the party by whom such assignment, transfer, demise or lease is to be made, or by his agent lawfully authorized thereunto.



SEC. 3. Deeds of conveyance and agreements in writing for the sale of or affecting title to any such right to the use of waters for the irrigation or betterment of lands, or for the operation of any mine, or any mill, manufactory or machinery, or having reference otherwise to the enjoyment or betterment of lands, may be acknowledged and recorded in the office of the Recorder of the county wherein such lands are situate, and from and after the filing thereof in such office, and not before, the same shall take effect as to subsequent *bona fide* purchasers and encumbrancers by mortgage, judgment or otherwise, not having notice thereof.

SEC. 4. Wherever any person being entitled to the use and enjoyment of waters for the irrigation of lands, or for the operation of any mine, mill, manufactory or other works, or in respect of other use in the enjoyment or betterment of lands, shall propose to transfer the customary use thereof, or any part of such waters, to the irrigation of other lands, or the operation of any other mine, mill or manufactory, or to other uses whatsoever, he shall make, acknowledge and cause to be recorded in the office of the Recorder of each county wherein the said waters have been theretofore customarily used or are proposed to be used, subsequent to such change of use, a certificate, setting forth his purpose in that behalf, and the particular lands irrigated, or the particular mine, mill, manufactory or other works theretofore operated, or the other use or place in respect to the enjoyment of lands to which the same waters have been theretofore applied, and the lands proposed to be irrigated, or the mine, mill, manufactory or other works proposed to be operated, or the lands in respect whereof such waters are, subsequent to such change, proposed to be used and enjoyed, and until such certificate be filed as above specified, such waters and the right to the use and enjoyment thereof shall continue in law appurtenant to the same lands, mine, mill, manufactory or other works, or

places where or upon or in respect whereof the same have theretofore been used and enjoyed as against *bona fide* purchasers, or encumbrancers not having actual notice of such change in the place of use of such water.

SEC. 5. Any conveyance of lands customarily irrigated by water to the use whereof the proprietor of such lands is or may be entitled, or of any mine, or any mill, manufactory or other works operated by means of such water, or of other lands or places whereunto the use or enjoyment of water hath become appurtenant by reason of the use and enjoyment of such lands and places by means of such water, and all agreements for the sale and conveyance of such lands or any interest therein, shall be deemed and taken to pass and convey or include, the right to the use of such water as theretofore enjoyed by the grantor in such conveyance, or the vendor in such agreement of sale, unless the same be expressly reserved or excepted out of such conveyance or agreement.

SEC. 6. On or before the first day of July, A. D. 1891, the proprietor or proprietors of every ditch, conduit or other works theretofore constructed for the diversion, conveying or storage of water, for the several use and enjoyment of the members of the association or corporation, or other individual consumers, shall prepare and cause to be subscribed and verified by the President or other chief officer of the association or corporation, proprietors of such works, or the superintendent thereof appointed in pursuance of this Act, a certificate or certificates setting forth the name of such ditch, conduit, reservoir, or other works; the Water District wherein the same is situate; the name of each individual member, share-holder or other person then enjoying and entitled to the use of water from such works; the amount of water to which such consumer is entitled, as nearly as may be, specifying the same in cubic feet per second; the particular land for the irrigation of which

said water has theretofore been customarily used or enjoyed by such individual consumer, or the mine, mill manufactory or other works theretofore customarily operated by such water, or other lands for the enjoyment or betterment of which such waters have been customarily applied; and the date from which such person or his predecessor in interest has used or enjoyed such water, and shall verify such certificate as true to his best knowledge, information and belief, and cause one original of such certificate, verified as aforesaid, to be filed and recorded in the office of the County Clerk of each county wherein such works, or any part thereof, may be situate, or wherein any part of the waters diverted, conveyed or stored by means thereof, may be used and enjoyed.

SEC. 7. The Clerk shall be entitled to like fees for recording such certificate as for recording conveyances of lands.

SEC. 8. Every such certificate until vacated, modified or set aside, as hereinafter provided, shall be deemed and taken as *prima facie* evidence in all Courts and places of the matters and things therein contained.

SEC. 9. Any member or share-holder of any such association or corporation, or other consumer of water under such works, or persons claiming to be entitled to the use and enjoyment of water from such works, and not named in such certificate as so entitled, or claiming to be entitled to a greater amount of water, or to the uses or enjoyment of water otherwise than in such certificate mentioned, may exhibit in the District Court of the county wherein he claims to be entitled to use and to enjoy such water, or any part thereof, his complaint for establishing his right in that behalf.

SEC. 10. In like manner whenever the proprietor or proprietors of any ditch, conduit or other works for diverting, conveying or storing waters for the several



use and enjoyment of the proprietors thereof, or the members of the association or corporation, proprietors thereof, or other individual consumers, shall fail or refuse to make or file such certificate, any person claiming to be entitled to the use or enjoyment of water from such works may exhibit his complaint in such District Court, praying the establishment of his right and the right of all others similarly situated in that behalf.

SEC. 11. The parties to the complaint and the proceedings thereupon shall be as prescribed in the ninth Article.

SEC. 12. Nothing in this Article contained shall be construed so as to require any city or town supplying water to the inhabitants thereof, or corporations, associations or persons supplying water to any city or town for the inhabitants thereof for domestic uses, to make and file the certificate required by the sixth section hereof.

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## ARTICLE VII.

### OF THE WATER DIVISIONS AND WATER DISTRICTS.

SECTION 1. For the better regulation of the distribution of water among the several persons and corporations entitled to divert, carry, distribute and use the same, the State shall be divided into Water Divisions and Water Districts as follows:

SEC. 2. All lands within the drainage basin of the South Platte river shall constitute Water Division Number One, and be named the South Platte Division.

SEC. 3. All lands within the drainage basin of the Arkansas river shall constitute Water Division Number Two, and be named the Arkansas Division.

SEC. 4. All lands within the drainage basin of the Rio Grande river shall constitute Water Division Number Three, and be named the Rio Grande Division.



SEC. 5. All lands within the drainage basin of the San Juan river or the drainage basin of the Dolores river shall constitute Water Division Number Four, and be named the San Juan Division.

SEC. 6. All lands within the drainage basin of the Grand river shall constitute Water Division Number Five, and be named the Grand River Division.

SEC. 7. All lands within the drainage basin of the Green river (except that part thereof drained by the White river) shall constitute Water Division Number Six, and be named the Green River Division.

SEC. 8. All lands within the drainage basin of the White river shall constitute Water Division Number Seven, and be named the White River Division.

SEC. 9. All lands within the drainage basin of the North Platte river shall constitute Water Division Number Eight, and be named the North Platte Division.

SEC. 10. All lands within the drainage basin of the Republican river, or the Smoky Hill river, shall constitute Water Division Number Nine, and be named the Republican Division.

SEC. 11. Wherever in any case any of the waters of any drainage basin have been or shall hereafter be diverted therefrom and carried into the drainage basin of another Water Division as above defined, the waters so diverted and carried shall, for the purpose of the adjudication of the rights and priorities of the appropriators thereof, and for the control of the diversion of such waters and the head of the ditch, canal or other works whereby the same are diverted, be deemed to be within the Water Division wherein is situate the natural stream out of which such waters may be taken; but in respect to the distribution and administration of such waters among the several consumers thereof, the same shall be deemed to be within the Water Division and the Water District thereof into which the same may

be first carried, and all lands irrigated thereby shall be deemed to be in such Water District, anything to the contrary in this act notwithstanding.

SEC. 12. All lands irrigated by waters taken from the South Platte river, between the Cache a la Poudre river and the west boundary of Washington county, or from the tributaries which flow into that part of the South Platte aforesaid, and all lands included within that part of the basin of the South Platte drained by said portion of the South Platte river or by the tributaries thereof aforesaid, and not irrigated by water taken from any other stream or any other part of the said South Platte river, shall constitute Water District Number One.

SEC. 13. All lands irrigated by waters taken from the South Platte river between the Cache a la Poudre and Cherry creek, or by waters taken from the tributaries of said stream which flow into that part thereof aforesaid (except the Big Thompson, St. Vrain and Clear creek), and all lands included within that part of the drainage basin of the South Platte river drained by said portion of the South Platte river or by the tributaries thereof aforesaid (except the Big Thompson, St. Vrain and Clear creek), and not irrigated by waters taken from any other stream, or any other part of the said South Platte river, shall constitute Water District Number Two.

SEC. 14. All lands irrigated by waters taken from the Cache a la Poudre or its tributaries, and all lands included within the drainage basin of said stream, not irrigated by waters taken from any other stream, shall constitute Water District Number Three.

SEC. 15. All lands irrigated by waters taken from Big Thompson creek or its tributaries, or included within the drainage basin of said stream, and not irrigated by waters taken from any other stream, shall constitute Water District Number Four.

SEC. 16. All lands irrigated by waters taken from the St. Vrain creek or its tributaries (except the Boulder and its tributaries), and all lands included within the drainage basin thereof, and not within the drainage basin of the Boulder, and not irrigated by waters taken from any other stream, shall constitute Water District Number Five.

SEC. 17. All lands irrigated by waters taken from Boulder creek or the tributaries thereof, and all lands included within the drainage basin of the Boulder, not irrigated by waters taken from any other stream, shall constitute Water District Number Six.

SEC. 18. All lands irrigated by waters taken from Clear creek and the tributaries thereof, and all lands within the drainage basin of Clear creek, not irrigated by waters taken from any other stream, shall constitute Water District Number Seven.

SEC. 19. All lands irrigated by waters taken from the South Platte river between the confluence of the north and south branches thereof, and the westerly boundary of Water District Number Two, or from the tributaries flowing to that part thereof, (except Bear creek), and all lands included within that part afore described of the basin of the South Platte river, (except the basin of Bear creek), and not irrigated by water taken from any other stream, shall constitute Water District Number Eight.

SEC. 20. All lands irrigated by waters taken from Bear creek and the tributaries thereof; and all lands included within the drainage basin of said stream, not irrigated by waters taken from any other stream, shall constitute Water District Number Nine.

SEC. 21. All lands irrigated by waters taken from the Fontaine qui Bouille above the south boundary of El Paso county, or from the tributaries thereof which flow thereunto in that part thereof aforesaid, and all lands



contained within that part of the drainage basin of said stream above described, not irrigated by water taken from any other stream, shall constitute Water District Number Ten.

SEC. 22. All lands irrigated by waters taken from that portion of the Arkansas river above Water District Number Twelve, or from the tributaries flowing into said stream in that part thereof aforesaid, and all lands included within that part of the drainage basin of the Arkansas river above described and not irrigated by waters taken from any other stream, shall constitute Water District Number Eleven.

SEC. 23. All lands irrigated by waters taken from the Arkansas river at any point within the limits of Fremont county, and all lands irrigated by waters taken from the tributaries of the Arkansas river flowing into that part thereof aforesaid, (except Grape creek and its tributaries) and all lands drained by that part of the Arkansas river lying in Fremont county or the tributaries thereof flowing into the same in that part thereof aforesaid, (except Grape creek and its tributaries) and not irrigated by waters taken from any other stream or any other part of the Arkansas river, shall constitute Water District Number Twelve.

SEC. 24. All lands irrigated by waters taken from Grape creek or the tributaries thereof and all lands included within the drainage basin thereof, not irrigated by waters taken from any other stream, shall constitute Water District Number Thirteen.

SEC. 25. All lands irrigated by waters taken from that part of the Arkansas river within the boundaries of Pueblo county or from the tributaries thereof, flowing into that part thereof aforesaid (except the St. Charles and Huerfano and the tributaries thereof, and except also that portion of the Fontaine qui Bouille embraced in Water District Number Ten and the tributaries thereof flowing into that part of said stream) and all lands con-



tained within that part of the drainage basin of the Arkansas river and the tributaries thereof aforesaid, (except the drainage basin of the St. Charles and Huerfano and except that part of the drainage basin of the Fontaine qui Bouille contained within the limits of District Number Ten) and not irrigated by waters taken from any other stream or any other portion of said Arkansas river, shall constitute Water District Number Fourteen.

SEC. 26. All lands irrigated by waters taken from the St. Charles river and its tributaries, and all lands included within the drainage basin of said stream, not irrigated by waters taken from any other stream, shall constitute Water District Number Fifteen.

SEC. 27. All lands irrigated by waters taken from the Huerfano and its tributaries, and all lands included within the drainage basin of said stream, and not irrigated by water taken from any other stream, shall constitute Water District Number Sixteen.

SEC. 28. All lands irrigated by waters taken from that portion of the Arkansas river below Water District Number Fourteen and above the Purgatoire river, or by waters taken from the tributaries of the Arkansas river flowing into that portion thereof aforesaid (except the Apishapa and its tributaries), and all lands within that part of the basin of the Arkansas drained by the said portion of the Arkansas river or by the tributaries thereof aforesaid (except the Apishapa and its tributaries), and not irrigated by waters taken from any other stream or any other part of said Arkansas river, shall constitute Water District Number Seventeen.

SEC. 29. All lands irrigated by waters taken from the Apishapa or the tributaries thereof, and all lands included within the basin of said stream not irrigated by waters taken from any other stream, shall constitute Water District Number Eighteen.

SEC. 30. All lands irrigated by waters taken from the Purgatoire river or the tributaries thereof, and all lands contained within the drainage basin of said stream and not irrigated by waters taken from any other stream, shall constitute Water District Number Nineteen.

SEC. 31. All lands irrigated by waters taken from that portion of the Rio Grande above the mouth of the Conejos, or from the tributaries thereof which flow into that part thereof aforesaid, including the Piedra, Spring creek, Gato and San Francisco creeks, and all other streams which in time of flood might flow into that portion of the Rio Grande above described, (except the Alamosa, La Jara and Trinchera, and their tributaries), and all lands included within that part of the drainage basin of the Rio Grande drained by said portions of the Rio Grande or the tributaries thereof aforesaid, (except the Alamosa, the La Jara and the Trinchera and their tributaries), and not irrigated by waters taken from any other stream or from any other part of the Rio Grande, shall constitute Water District Number Twenty; *Provided, however,* That nothing herein contained shall be construed to limit or diminish Water Districts Numbers Twenty-five, Twenty-six and Twenty-seven, as below described, or either thereof.

SEC. 32. All lands irrigated by waters taken from the Alamosa or the La Jara or the tributaries thereof, and all lands included within the drainage basin of either of said streams, and not irrigated by waters taken from any other stream, shall constitute Water District Number Twenty-one.

SEC. 33. All lands irrigated by waters taken from the Conejos or the tributaries thereof, and all lands included within the drainage basin of said stream, not irrigated by waters taken from any other stream, shall constitute Water District Number Twenty-two.

SEC. 34. All lands irrigated by waters taken from the South Platte river or the tributaries thereof, above

Water District Number Eight, and all lands included within that part of the drainage basin of the South Platte river aforescribed, and not irrigated by waters taken from any other stream, shall constitute Water District Number Twenty-three.

SEC. 35. All lands irrigated by waters taken from the Rio Grande between the Conejos and the State line or from the tributaries thereof which flow into that part thereof aforesaid, or from the Costilla or the tributaries thereof or streams which might in time of flood flow thereto, and all lands included within that part of the basin of the Rio Grande drained by that part thereof aforesaid, or by the tributaries thereof aforesaid, or by the Costilla or the tributaries thereof, and not irrigated by waters taken from any other stream or any other part thereof than as aforesaid, shall constitute Water District Number Twenty-four.

SEC. 36. All lands irrigated by waters taken from the San Luis creek, San Medino creek, Big Spring creek, Little Spring creek, North Zapato creek, South Zapato creek, Middle creek, Bear creek, Sierra Blanca creek, or the tributaries thereof respectively, or from any other stream between said San Medino and the Sierra Blanca creeks, and all lands included within the basin drained by said streams not irrigated by waters taken from any other streams, shall constitute Water District Number Twenty-five.

SEC. 37. All lands irrigated by waters taken from the Saguache creek and its tributaries, and all lands included within the drainage basin of Saguache creek not irrigated by waters taken from any other stream, and not contained within the limits of Water District Number Twenty-seven, as hereinafter defined, shall constitute Water District Number Twenty-six.

SEC. 38. All lands irrigated by waters taken from Turtle creek, Carnero creek, La Garita creek or other



creeks or streams which have their sources in the La Garita mountains and flow eastward into the San Luis Valley, and not into the Rio Grande or Saguache creek, and all lands included within the basin drained by either of said streams, and not irrigated by waters taken from any other stream, shall constitute Water District Number Twenty-seven.

SEC. 39. All lands irrigated by waters taken from the Tomichi river or the tributaries thereof, and all lands included within the drainage basin of the Tomichi not irrigated by waters taken from any other stream, shall constitute Water District Number Twenty-eight.

SEC. 40. All lands irrigated by waters taken from the Rio Piedra or its tributaries, or the San Juan river above the mouth of the Rio Piedra or from the tributaries of said San Juan which flow into that part thereof aforescribed, and all lands lying within the basin drained by the part of the San Juan river aforesaid and the tributaries thereof aforesaid, and not irrigated by waters taken from any other stream, shall constitute Water District Number Twenty-nine.

SEC. 41. All lands irrigated by waters taken from the Rio Las Animas or its tributaries, and all lands lying within the drainage basin of said stream, and not irrigated by waters taken from any other stream, shall constitute Water District Number Thirty.

SEC. 42. All lands irrigated by waters taken from the Los Piños or its tributaries, and all lands contained within the drainage basin of said stream, not irrigated by waters taken from any other stream, shall constitute Water District Number Thirty-one.

SEC. 43. All lands irrigated by waters taken from the tributaries of the San Juan river not included in the Water Districts Numbered Twenty-nine, Thirty, Thirty-one, Thirty-three and Thirty-four, or either thereof, and all lands included within the basin drained by said



tributaries, not irrigated by waters taken from any other stream, shall constitute Water District Number Thirty-two.

SEC. 44. All lands irrigated by waters taken from the La Plata river and the tributaries thereof, and lands included within the drainage basin of said stream, not irrigated by waters taken from any other stream, shall constitute Water District Number Thirty-three.

SEC. 45. All lands irrigated by waters taken from the Rio Mancos or the tributaries thereof, and all lands within the drainage basin of said stream, not irrigated by waters taken from any other stream, shall constitute Water District Number Thirty-four.

SEC. 46. All lands irrigated by waters taken from the Trinchera and the tributaries thereof, or from the streams which might in time of flood discharge into said stream, and all lands lying within the basin drained by the streams aforesaid, not irrigated by waters taken from any other stream, shall constitute Water District Number Thirty-five.

SEC. 47. All lands irrigated by waters taken from the Blue river or its tributaries, and all lands included within the drainage basin of said stream, not irrigated by waters taken from any other stream, shall constitute Water District Number Thirty-six.

SEC. 48. All lands irrigated by waters taken from the Eagle river or the tributaries thereof, and all lands included within the drainage basin of said stream, not irrigated by waters taken from any other stream, shall constitute Water District Number Thirty-seven.

SEC. 49. All lands irrigated by waters taken from the Roaring Fork of the Grand or the tributaries thereof, and all lands included within the drainage basin of said streams, not irrigated by waters taken from any other stream, shall constitute Water District Number Thirty-eight.

SEC. 50. All lands irrigated by waters taken from Roan creek or from the Grand river on the north side thereof, between the mouth of Roan creek and the mouth of Roaring Fork, and all lands irrigated by waters taken from the tributaries of Roan creek or those flowing to that part of the Grand aforesaid on the north side thereof, and all lands included within the drainage basin of that part of the Grand river aforesaid and lying on the north side thereof, not irrigated by waters taken from any other stream or any other part of the same stream, or diverted on the south side thereof, shall constitute Water District Number Thirty-nine.

SEC. 51. All lands irrigated by waters taken from Crystal creek or the tributaries thereof, or from the Gunnison river between Crystal creek and the westerly limit of Delta county, or from the tributaries thereof which flow thereunto in that part thereof aforesaid, (except the Uncompahgre), and all lands included within the basin of Crystal creek, or that part aforescribed of the basin of the Gunnison (except the basin of the Uncompahgre), not irrigated by waters taken from any other stream or any other portion of said Gunnison river, shall constitute Water District Number Forty.

SEC. 52. All lands irrigated by waters taken from the Uncompahgre river or the tributaries thereof, and all lands included within the basin of said stream not irrigated by waters taken from any other stream, shall constitute Water District Number Forty-one.

SEC. 53. All lands irrigated by waters taken from the Grand river between the mouth of Roan creek or the tributaries flowing thereto in that part thereof, or by the waters taken from the Gunnison river below the west boundary of Delta county, or from the tributaries which flow thereto in that part thereof aforesaid, and all lands included within the basin of said streams or either thereof, in that part thereof aforesaid, or the tributaries flowing thereto, and not irrigated by waters taken from

any other stream, shall constitute Water District Number Forty-two.

SEC. 54. All lands irrigated by waters taken from the White river or the tributaries thereof, and all lands included within the drainage basin of said stream, not irrigated by waters taken from any other stream, shall constitute Water District Number Forty-three.

SEC. 55. All lands irrigated by waters taken from the Yampa river above the Little Snake river, and below Fortification creek, or from the tributaries which flow thereto in that part thereof aforesaid, and all lands included within the basin drained by that part of the Yampa river and the tributaries thereof above described and not irrigated by waters taken from any other stream or any other part of the said Yampa river, shall constitute Water District Number Forty-four.

SEC. 56. All lands irrigated by waters taken from the Grand river on the south side thereof between the mouth of the Roaring Fork and the mouth of Roan creek, or from the tributaries thereof, which flow thereunto from the south, in that part thereof aforesaid, and all lands included within that part of the basin of the Grand above described and lying on the south side thereof, not irrigated by waters taken from any other stream or any other part of the Grand river or diverted on the north side thereof, shall constitute Water District Number Forty-five.

SEC. 57. All lands irrigated by waters taken from the North Platte river above the mouth of Michigan creek, or from the tributaries which flow into that part of said stream, and all lands included within that part of the basin of said river above described, not irrigated by waters taken from any other stream, shall constitute Water District Number Forty-six.

SEC. 58. All lands irrigated by waters taken from the North Platte river below the mouth of Michigan



creek or from the tributaries thereof flowing thereto in that part thereof aforesaid, or from Grand Encampment creek or the tributaries thereof, and all lands included within that portion of the drainage basin of the North Platte river above described, or the basin of Grand Encampment creek, and not irrigated by waters taken from any other stream or any other portion of the North Platte river, shall constitute Water District Number Forty-seven.

SEC. 59. All lands irrigated by waters taken from the Big Laramie river or the tributaries thereof, and all lands included within the basin of said stream not irrigated by waters taken from any other stream, shall constitute Water District Number Forty-eight.

SEC. 60. All lands irrigated by waters taken from the south fork of the Republican river or the Smoky Hill river, or the tributaries thereof, and all lands included within the basin of either of said streams and not irrigated by waters taken from any other stream, shall constitute Water District Number Forty-nine.

SEC. 61. All lands irrigated by waters taken from Muddy creek, or Troublesome creek, or the tributaries thereof, and all lands included within the basin of either of said streams, not irrigated by waters taken from any other stream, shall constitute Water District Number Fifty.

SEC. 62. All lands irrigated by waters taken from the Grand river above the mouth of the Blue river or from the tributaries which flow into that part of said stream, (except the Muddy and Troublesome creeks), and all lands within that portion of the basin of said stream above described, and not irrigated by waters taken from any other stream, shall constitute Water District Number Fifty-one.

SEC. 63. All lands irrigated by waters taken from the Grand river on the south side thereof, below the



mouth of the Blue river, and above the mouth of the Roaring Fork, or from the tributaries thereof which flow thereunto from the south in that part thereof aforesaid, (except the Eagle), and all lands included within that portion of the basin of the Grand river above described, and lying on the south side thereof, (except the basin of the Eagle), not irrigated by waters taken from any other stream or any other part of the Grand river, or diverted on the north side thereof, shall constitute Water District Number Fifty-two.

SEC. 64. All lands irrigated by waters taken from the Grand river on the north side thereof below the mouth of Muddy creek and above the mouth of the Roaring Fork, or from the tributaries which flow thereunto on the north side in that part thereof aforesaid, and all lands included within that portion of the basin of the Grand river above described, and lying on the north side thereof, not irrigated by waters taken from any other stream or any other part of the Grand river, or diverted on the south side thereof, shall constitute Water District Number Fifty-three.

SEC. 65. All lands irrigated by waters taken from the Little Snake river above the most westerly intersection thereof with the State line, or from the tributaries thereof flowing thereunto in that part thereof aforesaid, and all lands lying within that part of the basin of said stream above described, not irrigated by waters taken from any other stream, shall constitute Water District Number Fifty-four.

SEC. 66. All lands irrigated by waters taken from the Yampa river below Water District Number Forty-four, or from the tributaries which flow thereto in that part thereof, and not included in Water District Number Fifty-four, and all that part of the basin of the Yampa river above described, not irrigated by waters taken from any other stream, or any other portion of the

Yampa river, shall constitute Water District Number Fifty-five.

SEC. 67. All lands irrigated by waters taken from the Green river or the tributaries thereof, (except the Yampa), and all lands included within the basin of the Green river, (except lands within the basin of the Yampa), not irrigated by waters taken from any other stream, shall constitute Water District Number Fifty-six.

SEC. 68. All lands irrigated by waters taken from the Yampa river above Water District Number Forty-four, and below Elk creek, or from the tributaries which flow to that part thereof aforesaid, and all lands included within that portion of the basin of the Yampa river above described, not irrigated by waters taken from any other stream or any other part of the Yampa river, shall constitute Water District Number Fifty-seven.

SEC. 69. All lands irrigated by waters taken from the Yampa river above Water District Number Fifty-seven, or from the tributaries which flow into that part thereof aforesaid, and all lands included within that portion of the basin of the Yampa river above described, not irrigated by waters taken from any other stream, shall constitute Water District Number Fifty-eight.

SEC. 70. All lands irrigated by waters taken from the Gunnison river above the mouth of the Tomichi, or from the tributaries which flow into that part thereof aforesaid, and all lands irrigated by waters taken from the Gunnison river on the north side thereof below Tomichi creek, and above Water District Number Forty, or from the tributaries which flow to that part thereof aforesaid from the north, and all lands included within that portion of the basin of the Gunnison above the mouth of the Tomichi, and that portion thereof lying on the north side of the stream below the mouth of the Tomichi and above Water District Number Forty, not irrigated by waters taken from any other stream or any

other portion of the Gunnison, or diverted on the south side thereof below the Tomichi, shall constitute Water District Number Fifty-nine.

SEC. 71. All lands irrigated by waters taken from the San Miguel river or the tributaries thereof, and all lands included within the basin of said stream, not irrigated by waters taken from any other stream, shall constitute Water District Number Sixty.

SEC. 72. All lands irrigated by waters taken from the Dolores river above the San Miguel river or from the tributaries which flow to that part thereof aforesaid, and all lands included within that portion of the basin of the Dolores river above described, not irrigated by waters taken from any other stream, shall constitute Water District Number Sixty-one.

SEC. 73. All lands irrigated by waters taken from the Gunnison river on the south side thereof below the mouth of the Tomichi and above Water District Number Forty or from the tributaries which flow thereunto from the south, in that part thereof aforesaid, and all lands included within that portion of the basin of the Gunnison above described lying on the south side thereof, and not irrigated by waters taken from any other stream or any other portion of the Gunnison, or diverted on the north side thereof, shall constitute Water District Number Sixty-two.

SEC. 74. All lands irrigated by waters taken from the Dolores river below the San Miguel river, or from the tributaries which flow to that part thereof aforesaid, and all lands included within that part of the basin of the Dolores river above described, not irrigated by waters taken from any other stream or any other part of the Dolores river, shall constitute Water District Number Sixty-three.

SEC. 75. All lands irrigated by waters taken from the South Platte river below the western boundary line



of Washington county, or from the tributaries flowing to that part thereof aforesaid, and all lands included within that portion of the basin of the South Platte river above described, not irrigated by waters taken from any other stream or from any other portion of the South Platte river, shall constitute Water District Number Sixty-four.

SEC. 76. All lands irrigated by waters taken from the Middle and North Forks of the Republican river, or from Sandy creek, Frenchman's creek or the tributaries of either of said streams, and all lands included within the basin of either of said streams, not irrigated by waters taken from any other stream, shall constitute Water District Number Sixty-five.

SEC. 77. All lands irrigated by waters taken from the Dry Cimarron or the tributaries thereof, and all lands included within the basin of said stream, not irrigated by waters taken from any other stream, shall constitute Water District Number Sixty-six.

SEC. 78. All lands irrigated by waters taken from the Arkansas river below the mouth of the Purgatoire, or from the tributaries flowing to that part thereof aforesaid, and all lands included within that part of the basin of the Arkansas river above described, not irrigated by waters taken from any other stream or any other portion of the Arkansas river, shall constitute Water District Number Sixty-seven.

SEC. 79. Wherever the waters of any stream being diverted therefrom on one side thereof are applied first to the irrigation of lands on the side of diversion, and are afterwards carried across the stream for the irrigation of lands on the other side thereof, all lands irrigated by the waters so diverted, notwithstanding the foregoing delineations of the Water Districts, shall be deemed and taken to be within the Water District wherein is situate the head of the ditch, canal or other works of diversion.



SEC. 80. Other Water Districts may be formed from time to time by order of the Governor, either by consolidation or division of any of the Districts above designated, or otherwise, upon the recommendation of the Superintendent of Irrigation for the Water Division in which the proposed new district is to be formed, approved by the State Engineer, and upon the formation of such new district the Governor may in his discretion forthwith appoint some Water Commissioner for such district, to hold until recommendations can be made by the State Engineer.

## ARTICLE VIII.

OF THE ADJUDICATION OF RIGHTS AND PRIORITIES OF RIGHT TO  
DIVERT, CARRY OR STORE WATER.

SECTION I. In order to the proper and certain ascertainment of the amount of water at any time appropriated by means of any ditch, conduit, reservoir or other works for the diversion, carriage or storing of water, and the several dates and amounts of such appropriations respectively, and the names of the proprietors of such works, and the times during which they are severally entitled to divert, convey or store such waters and for the prevention and avoidance of controversies and the multiplicity of actions touching such matters in the several Water Divisions, exclusive jurisdiction for the ascertainment and settlement of the several rights and priorities of right of the proprietors of such works by means thereof to divert, convey or store such waters, is hereby conferred upon the following Courts within the several Water Divisions; that is to say:

For the South Platte Division, upon the District Court of the County of Weld; for the Arkansas Division, upon the District Court of the County of Pueblo; for the Rio Grande Division, upon the District Court of the County of Conejos; for the San Juan Division, upon the District Court of the County of La Plata; for

the Grand River Division, upon the District Court of the County of Garfield; for the White River Division, upon the District Court of the County of Rio Blanco; for the North Platte Division, upon the District Court of the County of Larimer; for the Republican Division, upon the District Court of the County of Kit Carson.

SEC. 2. The Clerks of the several District Courts wherein any depositions taken under or pursuant to the act entitled, "An act to regulate the use of water for irrigation, and providing for settling the priority of right thereto, and for payment of the expenses thereof, and for payment of all costs and expenses incident to said regulation of use," approved February 19th, 1879, or the act entitled, "An act to make further provisions for settling the priority of rights to the use of water for irrigation in the District and Supreme Courts, and for making record of such priorities, and for payment of costs and expenses incident thereto," approved February 23d, 1881, or the acts amendatory to either of said acts, may be remaining on file, and the Clerks of the several District Courts wherein hath been heretofore entered any decree for the adjudication of the priorities of right to the use of water for irrigation between the ditches, canals and reservoirs in any Water District, shall within thirty days after the approval of this act, transmit all such depositions and all reports of the referee appointed pursuant to either of the said acts, together with a copy of every such decree, certified under the seal of such Court, into the office of the Clerk of the District Court whereunto by this act jurisdiction is committed, for the ascertainment and settlement of the rights and priorities of right among the several appropriators of water in the Water Division wherein such Water District is situate.

SEC. 3. The reasonable fees of the Clerks of said Courts for copying and certifying such decrees shall be paid by the several counties wherein the said Water Dis-

tricts are respectively situate, in such proportions as may be directed by the District Court where such copies of decrees may be filed in pursuance hereof.

SEC. 4. If any person shall desire or propose to widen, deepen or in any manner enlarge or increase the capacity of any ditch, conduit or reservoir named in any of the decrees heretofore entered in any of the District Courts, for settling the priorities of right to the use of water for irrigation in any Water District, prior to the entry of the decree directed by this act for adjudicating and settling the rights and priorities of the several appropriators of water in such Water Division, he shall, before commencing such work of enlargement, cause such ditch, conduit or reservoir to be measured and rated or the capacity thereof to be estimated as required by this act, and the certificate of such measurement and rating or estimate of capacity to be approved by the State Engineer, and the proprietors of such works shall thereupon make in duplicate their certificate setting forth the fact of such measurement and rating or such estimate, and the capacity of such ditch, conduit or reservoir, as thereby ascertained, and the purpose and desire to enlarge the same, expressly declaring that they do not nor will claim to be entitled, by means or by reason of any decree theretofore made, to any greater quantity of water than the amount set down in such certificate of rating or estimate; and that save as to the amount of water set down in such certificate of rating or estimate, they expressly renounce, in favor of the public, all benefits of such former decree. Every such certificate of renunciation shall be subscribed and acknowledged as well by the proprietor or proprietors of the ditch, conduit or reservoir proposed to be enlarged, or in case of any ditch, conduit or reservoir owned by any corporation, by the President or other chief officer thereof, being thereunto first authorized by resolution of the Board of Directors, as by the other person or persons, if any desir-



ing or proposing such enlargement; and one such original thereof shall be deposited with the Clerk of the Court to which by this act is committed jurisdiction for the ascertainment and settlement of the several rights and priorities of those entitled to the enjoyment of water in the Water Division, and the other thereof shall be filed and recorded in the office of the Recorder of the county wherein the head of such ditch is situate. Any enlargement of any such ditch, conduit, reservoir or other works in violation hereof shall be deemed to be unlawful, and shall, in the distribution of water in such Water Division, be disregarded; and any person making any such enlargement of any such ditch, conduit, reservoir or other works, contrary to the provisions hereof, shall be deemed guilty of a misdemeanor and on conviction thereof shall pay a fine of not less than one thousand dollars and not exceeding five thousand dollars.

SEC. 5. The State Engineer shall, as soon as may be after the passage of this act, transmit to the Water Commissioner of each Water District and to the Superintendent of each Water Division, and to the owner of each ditch, conduit or reservoir theretofore constructed, as far as their names and places of residence shall be known to him, printed instructions touching the manner of construction of the rating-flumes and other measuring devices, the place or places where the same shall be located, the manner of making the measurement, rating, estimate of capacity, survey and plat of the ditches, conduit, reservoir and other works for the diversion, carriage or storage of water, hereby required, and such other instructions as to him shall seem fit or necessary for the guidance of such officers or the Deputy Irrigation Engineers in the discharge of their duties hereunder. The State Engineer shall also prescribe to the Assistant State Engineers and Deputy Irrigation Engineers a uniform formula to be used in estimating the capacity of works for the conveyance of water.



SEC. 6. The proprietors of any ditch, conduit, reservoir or other works, constructed or used for the diversion, carrying or storage of water for irrigation, desiring to procure an adjudication of their rights in that behalf, shall cause such works to be measured and rated or the capacity thereof to be estimated as required by this act, and the certificate of such measurement and rating or estimate of capacity to be approved by the State Engineer and shall also procure a survey and map of such works, to be made by some Assistant State Engineer or Deputy Irrigation Engineer, by him employed for that purpose. Every such Assistant State Engineer or Deputy Irrigation Engineer shall, at the time thereof, take in writing careful notes of every such survey by him made, showing in each case the name of such ditch, conduit, reservoir or other works, the name or names of the proprietors thereof, or of the association or corporation which is proprietor thereof, the date of such survey, the names of those assisting therein, and showing, either by reference to the public surveys, or where the said works are on unsurveyed lands, to conspicuous and permanent natural monuments, the place of the head of such ditch, conduit, or other works, the stream or sources of supply wherefrom water is taken, the places of the head-gate and rating-flume, the width, depth, and grade of such ditch, or conduit, at so many places as may be necessary to reasonably ascertain the carrying capacity thereof, the greatest depth of water which can safely be carried at each of such places and the form of the cross-sections to high-water mark, the courses and distances of such ditch, conduit or other works as surveyed, the several sections of land, according to the public surveys, over which the same is constructed, the location of every such reservoir and the exterior line thereof when filled to high-water mark, as nearly as may be, the capacity of such reservoir, a description of the embankment thereof, the places of inlet and outlet, and the waste-ways therefrom, and any other matter or

thing which the State Engineer may require to be set down in such notes of survey. Every such Assistant State Engineer or Deputy Irrigation Engineer, shall also prepare a map of every such ditch, conduit, reservoir or other works, by him surveyed as aforesaid, and shall, as soon as may be after the completion thereof, transmit to the State Engineer a copy of said field notes and of the said map, with affixed thereto his affidavit that the survey therein represented was by him actually made in the field at the date set down therein, that the same is a true copy of the field notes of such survey by him taken at the time, and that the places, courses, distances, grade and cross-sections of said ditch are truly set forth in the said notes, as he verily believes.

SEC. 7. Every such map shall be upon a scale sufficient to conveniently show the same matters and things required to be set down in the notes of survey, and on a scale of not less than two thousand feet to the inch, and shall be made upon sheets furnished from the office of the State Engineer.

SEC. 8. The State Engineer shall, on request, cause blanks for the notes of such surveys, and blank sheets for the preparation of the maps thereof, to be delivered to each Assistant State Engineer and Deputy Irrigation Engineer employed for the purpose.

SEC. 9. The State Engineer shall cause all such maps and notes of surveys to be carefully examined, and if approved by him shall endorse his approval thereon, and carefully preserve the same in his office. In case the survey of any ditch, conduit or reservoir be disapproved by the State Engineer he shall return the same for correction by the same or other Assistant or Deputy Irrigation Engineer, until a proper survey and map of the work be made and returned; *Provided, however,* That no such survey or map need be made where the same information is contained in the maps and statements theretofore filed in the office of the State Engineer

touching any ditch, conduit or other works, to the satisfaction of the State Engineer.

SEC. 10. The State Engineer shall cause an index of the several surveys of the ditches, conduits and other works for the diversion, conveyance or storage of water, as the same are filed in his office, to be prepared and always thereafter kept in his office so that the notes of such surveys and the maps thereof may be conveniently found and examined.

SEC. 11. As soon as may be after the completion and approval of the survey of any such works, the State Engineer shall cause copies of the map and field notes thereof, certified by him under his seal of office, to be transmitted to the Clerk of the Court to which by this act is committed jurisdiction for settling the rights and priorities of the appropriators of water in such Water Division.

SEC. 12. Whenever the proprietors of any ditch, conduit, reservoir or other works for the diversion, carriage or storing of water for the irrigation of lands, shall cause the same to be measured and rated by some Assistant State Engineer, or Deputy Irrigation Engineer, in pursuance hereof, and shall cause duplicates of the certificate of such measurement and rating verified by such Engineer, to be transmitted to the State Engineer, the State Engineer shall forthwith examine such certificate of measurement and rating, and if he shall approve the same shall cause one copy thereof certified by him under his seal of office to be transmitted to the Clerk of the District Court to which, in pursuance of this act, jurisdiction to adjudge and settle the rights and priorities of the several appropriators of water in such Water Division is committed, and the other thereof he shall file, record and carefully preserve in his office. If the State Engineer shall disapprove the measurement and rating of any ditch, conduit, reservoir or other works, he shall cause the fact of such



disapproval to be certified to the Superintendent of such ditch, conduit or other works, and shall direct further measurement and rating of such works, either by the same or other Assistant State Engineer, or Deputy Irrigation Engineer, as he may specify. Upon the completion of such second measurement and rating, the officer acting in that behalf shall make his certificate thereof, setting forth the same matters above prescribed, and shall transmit the same to the State Engineer, and the State Engineer shall take like proceedings in respect of such second certificate as prescribed in respect of the first. Whenever it shall appear to the satisfaction of the State Engineer that the waters of the stream or source of supply wherefrom any ditch, conduit or reservoir receives water, are so low at the head of the ditch, conduit or other works, that the same can not be filled, or that for any reason the same can not be measured and rated, as hereby required, the proprietors of such works may cause the same to be measured by not less than three disinterested persons (either Assistant State Engineers or Deputy Irrigation Engineers), and the capacity thereof estimated and certified by such three persons, and their certificate of such measurement and estimate of the capacity of such works verified by them and approved by the State Engineer shall be of like effect as the certificate of measurement and rating herein above first required; *Provided, however,* That the State Engineer shall not accept or approve any certificate of estimate as hereinabove provided, without first ascertaining to his own satisfaction the impossibility of rating such ditch, conduit or other works.

SEC. 13. The proprietors of every ditch, conduit, reservoir or other works for the diversion, conveyance, or storage of water for irrigation, within any Water Division, desiring the establishment of their right in that behalf, as herein provided, shall file with the Clerk of the District Court, to which by this act is committed



jurisdiction for ascertaining and settling the rights and priorities of the several appropriators of water in such Water Division, a statement of their claim in that behalf, entitled of the proper Court and "In the matter of the Adjudication of the Rights and Priorities of the Appropriators of Water for Irrigation in the ----- Water Division of the State of Colorado;" which statement shall set forth the names of the proprietors of such ditch, conduit or other works; the name of the Superintendent thereof, appointed in pursuance of this act and the post-office address of such Superintendent; all names by which such ditch, conduit, reservoir or other works hath theretofore been known, and the name by which the same is then and thereafter to be known; the time when such works were commenced and completed, fixing the day, month and year as near as may be; the time of commencement and completion of each enlargement or extension thereof, and the number of acres of land theretofore actually irrigated, by water from such works as originally constructed; the increased area, if any, irrigated after each enlargement, and the number of acres proposed to be irrigated therefrom; the particular months or parts of months in each year during which the appropriators of such works claim to be entitled to the use of water diverted, carried or stored by means thereof for irrigation; and the times when, in each year, the proprietors of any such reservoir have theretofore customarily filled the same. Every such statement shall be subscribed by some one or more of the proprietors of such ditch, conduit or other works, or the superintendent or manager thereof.

SEC. 14. At any time after the first day of September, A. D. 1891, any person claiming to be interested in the question, as the owner of any ditch, conduit or reservoir for the diversion, carriage or storing of water in such Water Division, or as a consumer of water therefrom for irrigation, may present to the District

Court having jurisdiction in such Water Division pursuant hereto, his petition or application in writing, praying the Court to proceed to an adjudication of the rights and priorities of right to the use of water for irrigation between the several appropriators in such Division.

SEC. 15. Every such petition shall be entitled: "In the matter of the Adjudication of the Rights and Priorities of the Appropriators of Water for Irrigation in the ----- Water Division of the State of Colorado." Upon the filing of such petition, the Court, if the same be presented in term time, or the Judge, if in vacation, shall make and cause to be entered of record an order specifying the time, not less than sixty days thereafter, when the same will be heard and when the Referee will be appointed pursuant to this act, and shall thereupon direct the Clerk to issue a citation under the seal of the Court directed: "To all whom it may concern," reciting the filing of such petition, and the substance thereof, and citing all concerned to attend and show cause against the said petition at the time so appointed. The Clerk of such Court shall cause one original of such citation to be transmitted to the Water Commissioner of each Water District in such Division, together with a sufficient number of copies thereof for service upon the superintendent or proprietor of each ditch, conduit, reservoir or other works, the proprietors whereof shall have filed in his office the statement required by the thirteenth section of this Article, and shall publish a copy of such citation in one newspaper in each Water District of such Division, where any newspaper is published, for at least thirty days prior to the day fixed for hearing. He shall in like manner transmit therewith to every such Water Commissioner a list of the ditches, conduits and other works for the appropriation of water in behalf whereof the statement required by the thirteenth section hath been filed with

him. The Water Commissioner upon receipt thereof shall forthwith, not less than five days prior to the date appointed therein for the hearing of such petition, deliver to the superintendent of each of the ditches, conduits and other works set down in such list, or to some one of the proprietors thereof, or where any such ditch, conduit or other works shall be owned by a corporation, to some one of the officers of such corporation, one copy of the said citation; or, if as to any such ditch, conduit or other works, no such superintendent, proprietor or officer be found, shall post a copy thereof at the head-gate or in some other conspicuous place thereon, or deliver such copy at the usual place of abode of the person upon whom service ought to be made, as aforesaid, to some person of not less than the age of fifteen years, if any such be found thereat, and shall return the original thereof with his endorsement of the service thereof, thereon endorsed or thereto attached. Every Water Commissioner serving or posting any such notice shall be entitled to receive therefor the same fees and mileage allowed by law to the Sheriff of the county wherein the service is rendered for the service of civil process out of the District Court.

SEC. 16. Every inhabitant of the State of Colorado, and all other persons in any manner interested as owner, lessee or otherwise, in any works in this State for the diversion, carriage or storing of water for irrigation, or as a consumer of water for irrigation from any such works, shall be deemed in law to have notice of such petition, and to be party thereto, and shall be entitled to attend either in person or by counsel before the Court or Judge, and be heard to show cause against such petition and touching the appointment of such Referee; as also either in person or by counsel, before the Referee appointed in pursuance hereof, and to produce evidence against the allowance of any appropriation claimed by any other person or corporation in such Water Division,



and shall be entitled to cross-examine the witnesses produced in behalf of any other person or corporation touching any appropriation, and (compliance with the provisions of this act touching the survey, measurement, rating or estimate of any works by means whereof any appropriation of water is claimed in his behalf, and touching the filing of the statement of claim in that behalf, being shown,) shall be allowed to produce evidence before such Referee in support of such claim of appropriation, and shall be entitled to attend and be heard in such District Court and before such Referee at all proceedings had or taken in pursuance of this act.

SEC. 17. Upon the filing of such petition the Court to which jurisdiction is hereby committed in that behalf shall be deemed to be invested with jurisdiction to settle and adjudicate the rights and priorities of the several appropriators of water for irrigation within such division, and such Court or the Judge thereof at the time and place specified in the order in that behalf, if due service of the said citation hath not been had, shall continue the matter to another day, and direct the issue of an *alias* citation or citations, as may be necessary. Further continuances of the matter may be made from time to time and *pluries* citations issued until service be had upon all persons and corporations above specified to be served therewith. Whenever it shall appear to the Court that due publication of said citation and service thereof upon all persons or corporations who have filed with the Clerk of the Court their statement as required by the thirteenth section of this Article hath been had, the Court or the Judge thereof shall hear all persons who may attend to oppose the said petition, and unless cause be shown to the contrary appoint some fit and proper person as Referee to hear and report to the Court such evidence as may be produced before him touching the appropriations of water for irrigation, and the rights and priorities of the several appropriators in such Water



Division, and shall by such order fix the times and places where such Referee shall attend in each Water District of such division to hear evidence touching such appropriations.

SEC. 18. The Court or the Judge thereof may from time to time afterwards specify other places at which the Referee shall attend, and fix the times of his attendance, or may specify other times for the attendance of the Referee at any of the places first named, or may direct that such Referee omit to attend at any of the places in such order named; *Provided, however,* That every such Referee shall be required to attend in at least one place in each Water District.

SEC. 19. Such Court or the Judge thereof shall at the same time and place appoint some attorney of good standing to attend on behalf of the public at all sittings of the said Referee, who shall be known as the State's Attorney for such Water Division, and whose duties shall be as hereinafter specified.

SEC. 20. The Court in the appointment of the Referee and the attorney aforesaid, shall select persons of known probity and capability, for their respective offices, and persons in no way interested in any ditch, conduit, reservoir or other works for the diversion, carriage or storing of water for irrigation in such Water Division, as owner thereof in whole or in part, or as the holder of stock in any corporation, the owner of any such works, or as consumer of water for irrigation from any such works. Such Referee and attorney may be appointed from among the inhabitants of such Division or from any other portion of the State. Neither such Referee nor such attorney shall, during his continuance in office, be counsel or attorney for the proprietors of any ditch, conduit, reservoir or other works, for the diversion, conveyance or storage of water in, or for use in, the Water Division for which he hath been appointed, or person claiming to be entitled to the use of water

therefrom for irrigation, either touching the matter of their claim in that behalf, or other matter whatsoever.

SEC. 21. Every order made in pursuance of this Article for the appointment of any Referee or attorney, or fixing the time for the attendance of the Referee in any Water District shall be entered of record; or if made in vacation shall be subscribed by the Judge and filed in the office of the Clerk of the Court, and by him entered in the records of the Court.

SEC. 22. Every such Referee and attorney shall before entering upon the duties of his office cause to be filed in the office of the Clerk of such Court, his oath or affirmation to support the Constitution of the United States and of the State of Colorado and faithfully perform the duties of his office.

SEC. 23. Every State's Attorney shall be entitled to the same orders and process for securing the attendance of witnesses as allowed to any party to the said proceeding. Such subpoenas shall be served by the Sheriff or any Constable of any county where the witness may be found, and the fees for such service shall be paid in the same manner as hereinafter provided in respect of the fees of such witnesses.

SEC. 24. It shall be the duty of such attorney forthwith upon his appointment, to prepare from the records in the office of the Clerk of such Court, a table of the several ditches, conduit, reservoirs and other works in such Water Division for the diversion, carriage or storing of water for irrigation, as may appear by the statements of the proprietors thereof filed in the office of such Clerk as required by this act, setting forth the names of the proprietors thereof respectively, the name of the Superintendent thereof, and the several matters required to be set down in such statement, and the capacity of such works as shown by the certificate of measurement and rating thereof, on file in the office of

the Clerk of such Court; and to otherwise familiarize himself with the said ditches, conduits, reservoirs and other works as fully as may be. Whenever in any case it shall appear to such attorney that the proprietors of any such works claim by the statement filed with the Clerk of the Court, in pursuance hereof, an excessive amount of water, or that any such statement is false in any particular, he shall use his best endeavors to procure and produce before the Referee at the proper time and place, evidence of the falsity of such claim in that behalf, and to that end may call upon the State Engineer to cause such works to be measured and rated or the capacity thereof estimated in the manner hereinbefore provided. He shall attend at all sittings of the Referee and cross-examine on behalf of the public whenever it shall appear to him necessary, all witnesses produced by any claimant touching his appropriation, and whenever it shall appear to him that any improper testimony is offered or produced before such Referee, shall at once object thereto, and cause his objections in that behalf to be noted by the Referee, and shall in all things to the best of his ability cause the truth of the matter touching every such claim to be made to appear by proper testimony before the Referee. He shall attend before the District Court upon the hearing of the matter upon the report of the Referee, and there present and argue all objections by him made to any improper testimony presented before the Referee, and shall fully and fairly advise the Court to the best of his ability as to the rights of the several claimants, so that no injury be done to any claimant, nor any excessive appropriation or false date of priority be allowed to any claimant.

SEC. 25. Forthwith, or as soon as may be after the entry of any such order appointing a Referee, or any subsequent order specifying the times and places at which he shall attend and hear testimony, or any order vacating any previous order in that behalf, the Clerk of



the Court shall certify and transmit to such Referee a copy thereof, and shall by advertisement published for the space of thirty days next after the entry of any such order first appointing the Referee, in at least one newspaper in each Water District, where a newspaper is published, give notice of the substance of such order and of the several times and places named therein for the attendance of the Referee.

Wherever in any case an order shall be entered by the Court or the Judge thereof appointing any different time or place for the attendance of the Referee in any Water District, a notice of such order and of the several times and places named therein for the attendance of the Referee, shall be prepared by the Clerk, and at least five copies thereof transmitted to the Water Commissioner of such Water District, who shall cause the same to be conspicuously posted in at least five public places of his District, and shall return to the Clerk of such Court an affidavit of the fact and time of posting such notices and the several places where the same were posted, attached to a copy of such notice.

SEC. 26. At the several times and places mentioned in such order or orders, the Referee so appointed shall attend, and shall hear and reduce to writing all testimony which may be offered by any person authorized, in pursuance hereof, touching the date of commencement and completion of each ditch, conduit, reservoir or other works theretofore constructed in such Water District for the irrigation of lands, and each enlargement thereof, if any, and the amount of water diverted or stored by means of any such works, or any enlargement thereof and actually applied to the irrigation of lands, and the periods and times for which during each year the waters may have been used from such works, or any of them, for irrigating and the lands irrigated thereby, or touching any other matter or thing which may tend to show the fact or date of the appropriation of water by



any appropriator, the amount of such appropriation, the periods and times of the actual enjoyment of the water for irrigation, or the transfer or abandonment by any appropriator, his heirs or assigns of his or their right to the enjoyment of water by him or them previously appropriated or used; *Provided, however,* That, (save by leave of the Court or the Judge thereof), no evidence shall be given before any such Referee of the appropriation of waters by any ditch, conduit, reservoir or other works, unless the proprietors of such works shall before the day first appointed for the sitting of the Referee in the Water District wherein such works may be situate, have filed the statement required by the thirteenth section of this Article, nor unless such proprietors shall, before the day named, have caused such works to be surveyed, measured and rated by the State Engineer or some Deputy Irrigation Engineer, or the capacity thereof to be estimated, in pursuance hereof, nor unless the map and field notes of such survey and the certificate of such rating or estimate with the approval of the State Engineer shall, in pursuance hereof, be certified to and filed in the office of the Clerk of the District Court, upon which by this act jurisdiction is conferred to adjudicate the rights and priorities of the several appropriators of water within the Water Division wherein such works are situate, as by this act above required; *And, provided further,* That nothing herein contained shall be construed as requiring the Court to disregard the claims of any person or corporation having in progress any ditch, conduit, or other works for the appropriation of water for irrigation, not then completed, or whereby the waters have not theretofore been appropriated to the full capacity of such works, but the rights of all such persons shall be saved as provided in the thirty-fifth section of this Article.

SEC. 27. Every such Referee shall have power to administer oaths and issue subpoenas for witnesses and

subpœnas *duces tecum*, which subpœnas may be served by any person whomsoever, and may require the witness to appear at any place appointed by the order of the District Court for the attendance of such Referee and at such day and hour as may be named therein. He shall proceed in all respects in the examination of witnesses as is or may be provided by law in the case of the taking of the deposition of a resident witness in causes pending in the District Court; *Provided, however*, that unless any person attending shall, touching any question or matter make request to the contrary, the deposition of every witness shall be reduced to writing in the narrative form. The Referee shall receive all deeds, certificates and other documents which may be offered by any person and return the same with his report; or in case any person shall produce in evidence any book, document or writing which shall not be under the control of the party desiring the benefit thereof, or which he shall desire to retain in his own custody, such Referee shall make or cause to be made a true copy of the parts demanded, and shall certify the same and transmit such copies together with the evidence concerning the same, as part of the evidence in the case. He shall also note at the proper place all objections which may be made by any person to any question propounded to any witness, or to any documentary evidence offered by any person, and certify the same in connection with such testimony. He shall also whenever he shall deem it necessary for the ascertainment of the truth touching any point involved in the matter in question, examine any witness produced before him so as to ascertain and make clear as far as possible the date of commencement of each ditch, conduit, reservoir or other works, the original capacity thereof, the date and capacity of each enlargement, the time spent in the construction of such works and each enlargement thereof, the amount of water actually carried in such ditch, conduit or other works, or stored in such reservoir as originally constructed and after each

enlargement, the time when the waters diverted thereby were appropriated and applied to beneficial uses, the nature of the work as to difficulty of construction, and all other facts which may show or tend to show the respective rights of the proprietors of the several ditches, conduits and other works in such Water Division in respect to the water diverted, carried or stored by such works or by any enlargement thereof, and their several priorities in right to the diversion, carriage, storage, use or enjoyment of the water, and the extent to which, and the periods during which by means of such ditches, conduits, reservoirs or other works they are severally entitled to have and use or convey, store and dispose of such waters for irrigation.

SEC. 28. Every such Referee shall give reasonable opportunity to all persons entitled to be heard before him to attend and present testimony touching their several rights and priorities in respect of the use of water for irrigating within such Water Division. No testimony shall be heard or received touching any ditch, conduit or reservoir, or any appropriation claimed or any right to water by means or in respect thereof, save in the Water District wherein is situate the head of such ditch or conduit, or the head of the ditch or conduit supplying such reservoir, unless by special order of the Referee on cause shown and after notice to all persons interested in asserting or opposing such claim, which notice shall be in writing and shall specify the day, hour and place when such testimony shall be produced, and shall be served at least six days prior to the time appointed for producing such testimony; but the Referee may when the time limited for his attendance at any place named in the order of the Court shall expire without full hearing of all testimony desired to be produced before him by any person entitled to be heard, adjourn the further taking of testimony proposed to be offered, to any other time and place appointed in the order of



the Court in that behalf for his attendance in the same Water District, and at such last named place may continue until all testimony shall be taken, or the Court or the Judge thereof may direct the further attendance of the Referee at the place of his attendance where such testimony was offered. The Referee shall cause all testimony heard by him to be taken down or copied in type-writing, and the depositions and other testimony touching each particular ditch, conduit, reservoir or other works, or the appropriation thereby, to be filed and preserved as one file. He shall from time to time, as the hearing proceeds, make an index of the several ditches, conduits and other works and rights claimed, touching which testimony shall be offered, so that the same may be conveniently consulted, and the testimony of any witness touching any particular claim readily found, and such depositions and other testimony and the index thereof he shall preserve and have with him at all times during the hearing, and during all such times and at all other convenient and reasonable times, shall allow the same to be inspected and seen and copies or extracts thereof to be made by any person desiring so to do, and upon the closing of the testimony the Referee shall return the same with the index aforesaid and the report of his actings and doings in the premises, into the office of the Clerk of the District Court wherein he was appointed as aforesaid, and shall notify the Judge of such Court, if the same be not in session, of the fact of the filing of his report.

SEC. 29. The District Court, wherein any Referee or State's Attorney hath been appointed in pursuance hereof, or the Judge of such District Court, may at any time in his discretion, and in case it shall be made to appear that such Referee or State's Attorney is for any reason disqualified for the duties of such appointment, or hath been guilty of any disobedience of the orders of the Court, or any negligence, partiality or wilfull mis-



doing in the discharge of the duties of his office, shall, remove such Referee or State's Attorney, and in case of any such removal, or the resignation or death of any State's Attorney or Referee before the completion of the whole of the testimony touching the appropriations in the Water Division to which he shall have been appointed, the proper District Court or the Judge thereof, shall by like order, as in the first instance, appoint a successor to such State's Attorney or Referee, and, if need be, appoint other times and places than those heretofore fixed for the attendance of such Referee in the several Water Districts of such Water Division; and all testimony theretofore taken before such Referee, and all copies of plats, certificates of measurements and rating, statements of claimants and other documents in the hands of any State's Attorney or Referee, appertaining to his office, shall by such State's Attorney or Referee so removed or resigning, or in case of the death of any State's Attorney or Referee, by his executor or other person, into whose hands the same shall come, be delivered to the successor in office of such State's Attorney or Referee, forthwith upon his appointment and qualification.

SEC. 30. On request of any Referee appointed in pursuance hereof, the Clerk of the District Court in which he is appointed shall cause to be delivered to such Referee the depositions mentioned in the second section of this Article, or any thereof, the statements of all claimants of water filed with him, and the certified copies of the certificates of measurement and rating, and of the maps of such Water Division, and forthwith afterwards, upon the further receipt by such Clerk of any such statements, certificates or maps, he shall cause the same to be transmitted to such Referee. He shall in every case require of such Referee, at the time of delivery thereof, a receipt for such depositions, statements, plats and certificates. All such depositions,

statements, certificates and plats shall by the Referee be kept present and subject to inspection by any person desiring to examine the same for the purposes of the hearing before the Referee, and shall by the Referee be returned into the Clerk's office with his report.

SEC. 31. In every such proceeding the copy of the certificate of the measurement and rating of any ditch, conduit, reservoir or other works made in pursuance hereof, and approved and certified by the State Engineer, shall be deemed *prima facie* evidence of the capacity of such works at the time of such rating, and that the capacity named therein was and is equal to the maximum capacity of such works at any time theretofore; and nothing in this act contained shall be deemed to entitle any person to read in evidence, use or refer to any depositions taken pursuant to the act entitled: "An act to Regulate the Use of Water for Irrigation, and providing for the Settling of Priorities of Right Thereto, and for Payment of Expenses Thereof, and for Payment of all Costs and Expenses Incident to such Regulation of Use," approved February 19, A.D. 1879; or the Act entitled: "An Act to Make Further Provisions for Settling the Priority of Rights to the Use of Water for Irrigation in the District and Supreme Courts, and for Making Record of such Priorities and for Payment of Costs and Expenses Incident Thereto," approved February 23, A.D. 1881; or any act amendatory thereof (save against the deponent in such former deposition or the person in whose behalf he was examined), or any decree given by any District Court under authority of or pursuant to any such enactment.

SEC. 32. Every person present before such Referee at any hearing, who shall willfully disturb the proceedings, and any person who shall refuse or neglect to obey any subpœna issued by the Referee or out of said District Court on behalf of, or at the instance of the State's Attorney, or who shall refuse or neglect to obey

any such subpœna in behalf of any private person or corporation when his lawful fees for his attendance shall have been tendered, shall be deemed guilty of contempt, and if complained of under oath of the Referee or any other person before the District Court or the Judge thereof, may be attached and dealt with as in other cases of contempt of such Court.

SEC. 33. Every witness who shall attend before any such Referee either under subpœna or by request of any party, shall be entitled to the same per diem and mileage as witnesses attending before the District Court, to be paid by the person requiring his attendance; in case any witness shall be subpœnaed at the instance of the State's Attorney, his per diem and mileage shall be paid by the several counties of such Water Division interested in the question, in such proportion as may be fixed and appointed by the order of the Court.

SEC. 34. Upon the return of such testimony such Court or the Judge thereof shall by order of record appoint a day for the final hearing of the matter of such petition, which shall be not less than thirty days subsequent to the filing of the report of the Referee. Any inhabitant of the State of Colorado and every other person in any manner interested as owner, lessee or otherwise of any works in this State for the diversion, carriage or storing of water for irrigation, or as a consumer of water for irrigation from any such works, may in person or by counsel file exceptions to the report of any such Referee in whole or in part, or may complain to the Court of any omission, willful neglect or oppression on the part of the Referee, whereby such party shall have been aggrieved, either by refusal of the Referee to hear or reduce to writing evidence offered, or by preventing reasonable opportunity to produce or offer such evidence, or by receiving improper evidence at the instance of any other party; and the State's Attorney for any such Water Division may interpose like excep-



tions. On the day so appointed for hearing, the Court which shall then, if the same be not in one of the regular terms thereof, be deemed to be sitting in special term, shall hear any person who may attend for that purpose, either in person or by counsel, touching the regularity of the proceedings of the Referee, and shall sustain or deny all exceptions filed to such report of the Referee or any part thereof, and if it shall appear that such Referee hath proceeded irregularly or in violation of the provisions of this act, or hath denied to any person any right secured or intended to be secured hereby in the matter of such hearing, shall appoint some other Referee, or refer the matter to the same Referee, to hear such testimony as may be produced by any particular persons, or corporations in such order named or touching any particular matter in such order named, or to permit cross-examination of any witness or witnesses in such order mentioned, and fix the time and place for the attendance of such Referee, and of all persons in interest before him, and the time when he shall report; and shall adjourn the further hearing of such matter until the time so appointed for the report of such Referee, and upon such further report shall proceed in like manner as in the first instance until satisfied that by the testimony heard before such Referee the truth of the matter touching the several appropriations of water for irrigation in such Water Division, has been ascertained; or the Court may, in its discretion suffer or direct the examination of witnesses in open Court touching the appropriation of water claimed by any person and the time and extent thereof, or the uses to which the same hath been applied, or any other matter or thing relevant to the adjudication of the rights and priority of right among the several appropriators of water for irrigation in such Water Division; and in lieu of adjourning the hearing of such matter, upon any second reference to the Referee, or the appointment of any new Referee, the Court may, in its discretion, proceed with the hearing touching the rights



of any person or corporation not affected by such second reference. And upon the conclusion of the hearing, after the final report of the Referee last appointed in such matter, and the testimony produced to the satisfaction of the Court, the Court shall make and enter its decree; setting forth the date and amount of the original appropriation of water by means of each ditch, conduit, reservoir or other works, as originally constructed, and the date and amount of appropriation of water by any subsequent enlargement thereof, and the times during which the proprietors of said works are entitled to divert, carry or use the said waters, and the place of the diversion of such waters from the natural stream or other source of supply wherefrom the same are diverted; *Provided, however,* That no person shall in such decree be adjudged or decreed to have appropriated or be entitled to divert, carry, use or enjoy any water, which by the testimony heard before the Referee or the Court, as hereinbefore specified, shall appear to have been abandoned, or which shall not by such testimony appear to have been actually appropriated and applied to beneficial uses by such person or by others to whose right he hath succeeded, or persons using and enjoying the waters diverted, carried or stored by means of such works under authority or license of such proprietors. In every such decree the appropriation by means of each ditch or conduit and the amount of water to which the proprietors thereof are thereby entitled, shall be designated in cubic feet per second of time, and the appropriation by means of every reservoir, according to the cubic contents thereof, to the extent to which the proprietors thereof are entitled to cause the same to be filled; and as to every such reservoir every such decree shall specify the number of times in each year and the particular times of the year, and the months, so far as practicable, when the proprietors of such reservoir are entitled to fill the same. In every such decree the said several appropriations of water throughout such Water

Division shall be arranged and numbered in consecutive order according to the dates of appropriation, whether such appropriations be made by the original construction of the ditch, conduit or other works or by subsequent enlargement thereof and without reference to the particular location of such works in the Division, or whether the same be taken from the main stream or the tributaries thereof.

SEC. 35. Whenever in such proceedings it shall be made to appear that any person, association or corporation hath theretofore commenced and hath in progress any ditch, conduit or other works for the appropriation or diversion of water for irrigation, but hath not completed the same, or that if the same be completed, the waters diverted thereby have not been appropriated to the full capacity of such works, and that a reasonable time hath not elapsed for the completion and utilization of such works, and for the full appropriation of the water diverted thereby, such decree shall be made with a saving of the rights of the proprietors of such works, and such proprietors may at any time afterwards, upon first procuring the survey and map of such works, and the certificate of rating or estimate of capacity hereinbefore required, and the approval thereof, and certified copies thereof, to be filed as hereinbefore required, upon not less than thirty days' notice to the several proprietors of the ditches, conduits and other works named in such decree as entitled to divert, carry or use water in such Water Division by means of any appropriation subsequent to the day alleged as the date of commencement of the works of such petitioner, their heirs or assigns, and due proof thereof made, apply to such District Court by petition to establish and settle by supplementary decree their rights in that behalf. Such notice may be made returnable either in term time or vacation. The Court or the Judge thereof, at the time appointed in such notice, shall either hear testimony in open

Court, or refer the matter of the taking of testimony to a Referee appointed for that purpose, with such particular directions as to him may seem fit, and upon full hearing of all parties, such Court, or the Judge thereof in vacation, may make such supplementary decree touching the rights of such petitioner and all others as right and justice may require. Such decree shall in no manner affect or impair the rights of any appropriator, not served with a notice of the petition as above required, and not appearing to oppose or contest the same. All testimony heard either before the Court or the Referee upon such petition, shall be reduced to writing in the manner hereinbefore provided, and shall, if heard before the Court or Judge, be at the time reduced to writing, and certified by the Judge of the Court, and filed in the original cause in which such petition is presented, and like proceedings shall and may thereafter be had within the like limitation of time, for review or re-argument of such supplementary decree as herein provided; and an appeal or appeals may be taken and prosecuted for reviewing such decree in like manner, and under the same regulations as herein provided for appeals from such original decree.

SEC. 36. Save as provided in the last preceding section, no adjudication shall be made in any such decree for or in behalf of the proprietors of any ditch, conduit, reservoir or other works, who shall have failed to deliver into the office of the Clerk of the District Court the certificate required by the thirteenth section of this Article, or who shall have failed to cause such works to be surveyed, measured and rated, or the capacity thereof estimated, as herein provided, and certificates thereof to be approved by the State Engineer, as required by the twelfth section hereof.

SEC. 37. The proprietors of any such ditch, conduit or other works having failed to cause such survey and map, or such measurement and rating or estimate of



capacity to be made, and to be approved by the State Engineer, or the statement required by the thirteenth section hereof to be filed before the first day appointed for hearing of the testimony by the Referee in the Water District wherein such works are situate, or having failed by reason of excusable mistake or neglect to present the proofs of their right before the Referee at the time and place appointed for the purpose, pursuant hereto, may at any time afterwards and before conclusion of the hearing of the testimony by the Referee in such Water District, file such statement and cause such survey and map and such measurement and rating, or estimate of capacity to be made, and to be approved by the State Engineer, and certified copies of such map, and the certificate of rating, or estimate of capacity to be filed with the Clerk of the District Court, having jurisdiction in the matter by this act, and may thereupon apply by sworn petition to the District Court having jurisdiction in the matter, or the Judge thereof in vacation, for leave to attend and make proof of the right of such proprietors in respect of the waters diverted, carried or stored thereby, for irrigation, and their priority in respect to such waters, and such Court or the Judge thereof may, if it shall appear to his satisfaction that the omission of the said proprietors in that behalf, was through excusable mistake or neglect, and without any intention to secure unfair advantage, allow such petition upon such terms as shall seem to be just. Thereupon such statement and the certificate of the measurement and rating, or estimate of capacity certified and approved by the State Engineer shall be delivered by the Clerk of the Court to the Referee, and upon not less than ten days previous notice of the allowance of such petition given by the petitioner to all appropriators of water in the Water Division, who have theretofore filed with the Clerk of the District Court their statements of claim as required by the thirteenth section of this Article, and to the State's Attorney for such Water Division, and due proof



of such service to the satisfaction of the Referee, testimony shall be heard touching the rights of the proprietors of such ditch, conduit or other works, in like manner as in other cases.

SEC. 38. If at any such hearing it shall appear to the Court that any person, association or corporation claiming to be entitled to divert, convey, store or use water for irrigation, hath willfully refused to produce any deed, book, record or other document or writing when rightfully required thereto as evidence in behalf of any party to such hearing, such person shall not in such final adjudication be allowed the benefit of any testimony or proofs given in his, her or their behalf, but the Court shall reject and dismiss all claim of such party so in default; *Provided, however,* That such person or persons may afterwards proceed to establish his, her or their rights in that behalf as hereinafter provided.

SEC. 39. The District Court or the Judge thereof in vacation shall have power to make all such reasonable orders and rules of proceeding, consistent with this act, as may be found necessary or expedient from time to time for carrying out the intent of this act, as well touching the proceedings in such Court as touching the proceedings before the Referee, for the purpose of securing to all parties full hearing before the Referee; or in case of denial of right by the Referee, for securing to the party aggrieved opportunity for redress; and this act shall be construed liberally in all Courts and places in favor of securing to all persons interested, the just determination and protection of their rights.

SEC. 40. The District Court or the Judge thereof in vacation shall have power, upon notice and for good cause shown, and upon such terms as to him may seem just to all parties, to order a re-hearing of such matter at any time within two years next following the entry of such decree, and the Court or Judge may in his discretion allow additional evidence to be taken, touching

any matter in question arising in the said proceeding; but no such review, re-hearing or further examination shall be ordered or had unless applied for by petition filed in such District Court within one year after the entry of the decree complained of.

SEC. 41. Any person or corporation claiming to be the owner of any ditch, conduit, reservoir or other works for the diversion, conveyance or storage of water for irrigation, or to be entitled to have or enjoy water for irrigation therefrom, or any number of persons claiming to be the owners of, or jointly or severally entitled to water for irrigation from two or more ditches, conduits or other works, which are affected in common by such decree or any portion thereof, by which he, she or they may feel aggrieved, may have an appeal therefrom to the Supreme Court at any time within two years after the entry of such decree, and several such appeals may be prayed and taken from several parts of the decree by the same or different parties. The persons named as the proprietors of the ditch, conduit, reservoir or other works, the decree in favor of which is complained of by the appellants, shall be the appellees. The parties desiring such appeal shall file in the District Court a statement in writing, verified by affidavit, specifying the part or parts of the decree of which they complain, the name or names of the ditches, conduits, reservoirs or other works, the proprietors whereof are alleged to derive by such decree undue advantage in respect of priority or otherwise, as against the interests of the appellants, the ditches, conduits, reservoirs or other works claimed by the appellants or wherefrom the appellants claim to be entitled to water for irrigation, also setting forth the names of the party or parties claiming such other ditches, conduits, reservoirs or other works, as are by said appellants claimed or asserted to so derive undue advantage by such decree and praying that an appeal be allowed from the said decree, as against such other parties afore-

named. The District Court or the Judge thereof in vacation shall make an order allowing the appeal, specifying the names of the appellants and the names of the appellees (which may, in the discretion of such Court or Judge, include other parties in interest than those named in the application for appeal), and shall fix the amount of the appeal bond, which bond shall be executed by one or more of the appellants as principal or principals, and one or more sureties to be approved by the Judge of such Court (or the Clerk thereof, if the order shall so direct), and shall be conditioned for the payment of all costs which may be awarded against the appellants by the Supreme Court.

SEC. 42. The order directed by the preceding section shall be entered of record, and the appellants shall cause a copy thereof to be delivered to the State's Attorney for such Water Division and to each of the appellees severally, if he, she or they may be found; or otherwise shall cause the same to be served in the manner and at the time prescribed by law for the service of summons out of the District Court in the case of non-resident or absent parties, or parties not found.

SEC. 43. Within three months after the allowance of such appeal or appeals, the Clerk of the District Court wherein any such decree hath been entered, upon payment of his lawful fees in that behalf, shall file in the office of the Clerk of the Supreme Court a certified copy of the decree so appealed from, or such part thereof as the appellant or appellants may in writing specify for the purpose, together with a transcript of so much of the evidence heard in the District Court as shall be designated by counsel for the appellants. No exception need be reserved by any person to such decree or any part thereof, or to any action of the Court or the Referee, in order to entitle any person complaining to a review, in the Supreme Court, of the matter so complained of. All testimony and objections thereto shall



be deemed and taken to be part of the record. The appellees in any such appeal may without suggestion of diminution of the record, cause a transcript of any portion of the testimony not contained in the transcript filed by the appellants, to be certified and filed in the Supreme Court, and the said appeal shall be proceeded with in like manner as other appeals. The Supreme Court may in its discretion direct other parts of the testimony heard in the District Court to be certified to it, and may direct other parties to be cited to appear in such appeal, and may on final hearing affirm or reverse such decree (if appeal be taken from the whole thereof), or any part thereof appealed from, and shall award costs in its discretion; and may, where any part of the decree appealed from shall be reversed, make such decree as ought to be made by the District Court, or may remand the cause with directions to the District Court as to the manner and respects in which such decree shall be modified.

SEC. 44. In case appeal be taken from the whole of any such decree, the Clerk of the District Court, shall, if so directed by the Judge of such District Court, certify the original of the depositions and documentary evidence read in the District Court on the hearing of such matter; and upon the determination of such appeal such originals shall be returned by the Clerk of the Supreme Court to the Clerk of the District Court.

SEC. 45. The appeal from such decree or any part thereof shall not operate as a *supersedeas*, but such decree shall notwithstanding any such appeal be in all things carried into execution and obeyed by [the several Superintendents of Irrigation in each Division and by the Water Commissioner in each Water District until modified by the District Court upon rehearing as herein provided, or reversed or modified by the Supreme Court, or pursuant to the order of the Supreme Court.



SEC. 46. Proof of the publication of any notice required by this act shall be sufficiently made by certificate of the publisher of the newspaper wherein the same shall be published, and proof of the service of any process or notice or the posting of any notice hereby required may be made by return of the officer, or affidavit of any person serving or posting the same.

SEC. 47. If the transcript of record of the decree and testimony be not filed in the office of the Clerk of the Supreme Court, together with the proof of the service of the order allowing the appeal upon the several appellees therein named within three months after the making of such order, the appeal shall, on motion of any of the appellees therein, or the State's Attorney for such Water Division, be dismissed, unless the Court shall, for good cause shown, grant further time for the filing of such transcript or for making and filing proof of the serving of such notice.

SEC. 48. The Supreme Court shall have power to make rules concerning such appeals as may be necessary or expedient for the furtherance of the purposes of this act, as well in respect to the preparation and submission of the cause as for supplying deficiencies in the record and avoiding unnecessary costs and delay. Save as in this act and in such rules of the Supreme Court provided, such appeals shall be governed in all things by the laws regulating appeals in other cases.

SEC. 49. Nothing in this act or in the decree rendered under the provisions hereof, shall prevent any person, association or corporation from instituting in the District Court having jurisdiction by this act for the ascertainment and settlement of the rights and priorities of the several appropriators of water in any Water Division, any suit or action hitherto allowed by the law for establishing any claim of right or priority to divert, carry, store or use water for irrigation, at any time within four years after the entry of the final decree

provided for in this act in the Water Division wherein such right may be claimed. No preliminary injunction shall issue in any case restraining the use or distribution of water in any Water Division wherein such final decree shall have been rendered, in conformity with the provisions of such decree, or which shall affect the distribution or use of water in any manner adversely to the rights of the parties thereto as thereby determined and established.

SEC. 50. After the lapse of four years from the entry of such final decree in any Water Division, all persons who have not theretofore instituted an action or actions as provided in the last section, shall be forever barred from setting up or alleging any claim to the use of water in such Water Division contrary to the effect of such decree, save as hereinafter provided, in the case of the abandonment by any appropriator of the waters whereunto by such decree he may be entitled.

SEC. 51. As soon as may be after the entry of such final decree, as hereinabove provided in any Water Division, the Clerk of the District Court wherein such decree hath been entered shall prepare and certify a copy thereof and transmit the same to the State Engineer for his guidance, and shall in like manner, on the payment of his proper fees in that behalf, certify and deliver a copy or copies thereof or any part thereof to any other person whomsoever on request; and whenever any supplementary decree shall be made or entered in any such District Court for modifying or amending such original decree, or any decree shall be entered in the Supreme Court reversing or modifying any such decree, or directing the modification thereof by the District Court, the Clerk of the Supreme Court shall in like manner certify a copy thereof and transmit the same to State Engineer.

SEC. 52. The State's Attorney appointed in pursuance hereof shall be paid the sum of ten dollars per

day for each day during which he shall be necessarily employed in the discharge of his duties herein prescribed. The Referee shall be paid the sum of ten dollars for each day during which he shall be so employed, which shall be in full of all service rendered by such Referee, his clerks and assistants. The State's Attorney and Referee shall severally be allowed their reasonable and necessary expenses and mileage at the rate of ten cents for each mile actually and necessarily traveled by them, going and coming in the discharge of their respective duties.

They shall each keep a just and true account of the time employed in the discharge of his duties and his expenses and mileage, setting down therein in what particular examination or other matter he was employed during each day charged for, and the particular items of all expenses charged, and the particular journeys in respect of which mileage is charged, and shall return the same verified by his oath into the District Court, and the same *per diem* allowance, expenses and mileage, and the fees of the Clerk and all Sheriffs and Water Commissioners for the serving of notices or process, and the fees of all witnesses attending before the Referee, on behalf of the State, and the costs of the publication of the notices hereby required, shall by the Court or the Judge thereof from time to time, as soon as may be after the rendition of the service, be ascertained and determined and apportioned among the several counties which in whole or in part are contained within the Water Division, and such Court shall enter an order allowing to the persons entitled, respectively, as a debt against the several counties, the amount so apportioned against them respectively, and the Board of Commissioners of each of such counties upon production of the certified copy of so much of said order as relates to the apportionment against said county, shall allow the amount and cause a warrant to be drawn therefor upon



the County Treasurer in favor of the person or persons named in such order as entitled thereto. The Court or the Judge thereof in vacation may at any time pending the said proceedings or the hearing of testimony before the Referee, allow either to the State's Attorney or to the Referee or to any other officer or witness, for his service, mileage, expenses or attendance either before the Referee or otherwise, the amount then due him in that behalf, and may direct any such amount to be paid wholly by any one of the several counties, and other amounts payable to any person on like account to be paid by any other county of such Water Division, so that howsoever upon final adjustment of the costs of such proceeding, the same shall be justly apportioned among the several counties of such Water Division.

SEC. 53. If any person shall procure or solicit the State Engineer or any Assistant State Engineer, or any Deputy Irrigation Engineer to make or certify any false measurement, rating or estimate of the capacity of any ditch, conduit, reservoir or other works, or shall solicit or procure the approval by the State Engineer of any false measurement, rating or estimate, or if the State Engineer or any Assistant State Engineer, or any Deputy Irrigation Engineer shall knowingly and willfully make or approve any such false rating, measurement or estimate, or any certificate thereof, or if any State's Attorney or Referee, appointed in pursuance hereof, shall accept such appointment, being then in any way interested in any ditch, conduit, reservoir or other works for the diversion, conveyance or storage of water for irrigation in such Water Division, as owner thereof in whole or in part, or as the owner of stock in any corporation, the proprietor of any such works, or as the consumer of water for irrigation from any such works, or being then counsel or attorney for any such person or corporation, the proprietor of such works, touching his or its claim in that behalf, shall accept such appoint-



ment to either of said offices, or shall afterwards, directly or indirectly during his continuance in office, purchase or bargain or negotiate for any interest in such works, or in the stock of any corporation, proprietor thereof, or any right to the use of water therefrom, or shall knowingly accept the retainer or employment of any person or corporation, proprietor of such works, or any consumer of water therefrom for irrigation, in respect of the claim of the proprietors of any such works, or the claim of such person in that behalf, or other matter whatsoever, or shall willfully refuse to perform any duty hereby required of him, or shall destroy or suppress any deposition taken before any such Referee, or any plat, certificate or statement delivered to him in pursuance hereof, or any document or copy thereof produced or delivered to him as evidence in behalf of any person, association or corporation, or if any such Referee shall knowingly and willfully make any false report of any testimony, or if any such State's Attorney shall knowingly connive at any false claim made by any person before such Referee, every person so offending shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by fine not exceeding two thousand dollars, or by imprisonment in the Penitentiary not exceeding three years, or by both such fine and imprisonment in the discretion of the Court wherein conviction shall be had.

SEC. 54. Any person, association or corporation claiming to be entitled to the enjoyment and use of water for irrigation in any Water Division by appropriation subsequent to the last in priority of the appropriators named in any such decree (entered in pursuance of this Article), upon procuring the ditch, conduit or other works by which such waters are appropriated, to be surveyed, and the notes and map of such survey as required by this Article to be approved by the State Engineer, and upon also procuring such works to be measured and

rated, or the capacity thereof estimated, in like manner as hereby required, and upon procuring to be filed in the office of the Clerk of the District Court to which in pursuance of this act jurisdiction is committed to adjudge and settle the rights and priorities of the several appropriators of the Water Division, a copy of the field notes and map of the survey of such works and of the certificate of such measurement and rating or estimate of capacity by the State Engineer, as required by this Article, may apply by petition to such District Court, or the Judge thereof in vacation, to ascertain and settle by decree his right and the right of all others in said Water Division similarly situated. Together with such petition the petitioner therein shall file with the Clerk of the Court a certificate from the State Engineer setting forth the names of all persons, associations and corporations who, since the date of priority awarded by the former decree, entered in such Water Division, in pursuance of the thirty-fourth section of this Article, to the appropriator last in priority in such decree named, have filed in the office of the State Engineer the map and statement required by the fourth Article. Upon the filing of such petition the Judge of the Court shall appoint a day when the same shall be heard, and the Clerk of the Court shall thereupon issue and transmit to the Water Commissioner of each Water District in such division, a citation with copies thereof which shall be served upon each appropriator and claimant of water named in the list of appropriators aforesaid, at least five days prior to the date appointed for such hearing, and thereupon the like proceedings shall be had touching the claim of the petitioner and all other appropriators cited as aforesaid as hereinabove prescribed by this Article, touching the original ascertainment of priorities; *Provided, however,* That the final decree upon such petition shall in no manner impeach or impair the right of any appropriator named in such former decree or any decree entered in the said Water Division to have, use and enjoy

the waters to the use whereof by the terms of such decree such appropriator shall appear to be entitled, unless it shall be made to appear and shall be adjudged that the right to the use of such waters as specified and awarded in the former decree was obtained by corruption or fraud or hath been lost by abandonment or otherwise, nor unless such appropriator, his heirs, assigns or those entitled under him to the use of such waters, be cited and be made party to such petition and such corruption or fraud or the abandonment or loss of the right to the use of such waters be in such petition expressly averred.

SEC. 55. The publisher of any newspaper wherein shall be inserted any notice required to be published by this act, shall be entitled to the same fee as is or may hereafter be allowed by law for the publication of summons in counties of the class in which said newspaper may be published.

SEC. 56. Wherever in any Water District there shall be no newspaper published or the proprietors of no newspaper, in such Water District will publish any citation or notice required by this act, for the fee herein provided, payable as herein provided, the posting thereof hereby provided shall stand in lieu of such publication.

SEC. 57. The terms "appropriator," "appropriators," or "appropriators of water," as used in this Article shall be construed to include the proprietors of works for the diversion, conveyance or storage of water for irrigation, though such water be used and enjoyed solely by others.

SEC. 58. Every decree entered in pursuance of this Article, establishing the right of any person or corporation to divert, convey or store water for irrigation, shall expressly provide that such person or corporation shall divert, convey or store such water only to the extent of the reasonable needs of the persons or corporation using the same, his, her or its heirs, successors or assigns.



## ARTICLE IX.

## OF CARRIERS OF WATER.

SECTION I. It shall not be lawful for any person, association or corporation owning or controlling, or claiming to own or control, any ditch, canal or reservoir carrying or storing or designed for the carrying or storing, of water taken from any natural stream, or other source of supply within this State, to be carried or stored and delivered for compensation, for irrigation, mining, milling, sanitary or domestic purposes, to persons not interested in such ownership or control, to demand, bargain for, accept or receive from any person, who may apply for water for any of the aforesaid purposes, any money or other valuable thing whatsoever, or any promise or agreement therefor, directly or indirectly, as royalty, bonus or premium, prerequisite or condition precedent to the right or privilege of applying or bargaining for, or procuring such water; but such water shall be carried or stored and delivered according to the right of the person entitled to the enjoyment thereof, upon the payment or tender of the charges fixed by the County Commissioners of the proper county, as is or may be provided by law. Any and all moneys and every valuable thing or consideration of whatsoever kind which shall be so as aforesaid demanded, charged, bargained for, accepted, received or retained, contrary to the provisions of this section, shall be deemed and held an additional and corrupt rate, charge or consideration for the water intended to be furnished and delivered therefor, or because thereof, and wholly extortionate and illegal, and when paid or delivered or surrendered may be recovered back by the party or parties paying, delivering or surrendering the same, from the party to whom or for whose use the same shall have been paid, delivered or surrendered, together with all costs of suit, including reasonable fees of attorneys of plaintiff, by proper action in any Court having jurisdiction.



SEC. 2. Every person, association or corporation owning or controlling or claiming to own or control any ditch, canal or reservoir, as is mentioned in the first section of this Article, who shall, after demand in writing made upon him for the supply or delivery of water for irrigation, mining, milling or domestic purposes, to be delivered from the ditch, canal or reservoir owned, possessed or controlled by him, and after tender of the lawful rates of compensation therefor in lawful money, demand, require, bargain for, accept, receive or retain from the party making such application, any money or other thing of value, or any promise or contract or any valuable consideration whatever, as such royalty, bonus, premium, prerequisite or condition precedent, as is by the provisions of the first section of this Article prohibited, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one hundred dollars, nor more than five thousand dollars, or imprisonment for a term of not less than three months nor more than one year, or both such fine and imprisonment, in the discretion of the Court.

SEC. 3. Every person, association or corporation owning or controlling, or claiming to own or control any ditch, canal or reservoir such as is mentioned in the first section of this Article, who shall, after demand in writing made upon him for the carriage or delivery of water for irrigation, mining, milling, sanitary or domestic purposes, to be carried in or delivered from the ditch, canal or reservoir owned, possessed or controlled by him, and after tender of the lawful rate of compensation therefor in lawful money, refuse to furnish and deliver from such ditch, canal or reservoir, any water so applied for, or carry therein any water the carriage whereof is so applied for, which water can or may be, by use of reasonable diligence in that behalf and within the carrying or storage capacity of such ditch, canal or reservoir lawfully carried, furnished and delivered, without

infringement of prior rights, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, nor more than five thousand dollars, or imprisonment for a term of not less than three months nor more than one year, or both such fine and imprisonment in the discretion of the Court; *Provided, however,* That when any person, association or corporation hath heretofore constructed or shall hereafter construct any ditch, canal, conduit, reservoir or other works for the carrying or storage of waters in part for the irrigation of land belonging to such person or corporation, or for the enjoyment of such waters in part by such person or corporation for any other purpose whatsoever, and in part for the use of other persons or corporations, nothing herein contained shall be so construed as to require such person or corporation to yield up or deliver to others, or to suffer to be used by others the waters by him or it theretofore devoted to beneficial uses; and every such person or corporation shall be entitled to a reasonable time after the completion of his works, for enclosing, breaking up and otherwise preparing any lands by him or it proposed to be irrigated, or for erecting and equipping any works intended to be operated by means of such waters, or for preparing to use and enjoy in any other way whatsoever the waters so diverted for his or its purpose.

SEC. 4. If any person, association or corporation in defiance, or evasion of the provisions of this act, shall after the tender of the compensation hereinbefore provided for, refuse to deliver water as is mentioned in the third section of this article, to any person or corporation lawfully entitled to apply therefor, or to perform any duty required of him in this act, it shall be the duty of the Attorney General, upon request of the County Commissioners of the proper county, or upon his otherwise receiving due notice thereof, to institute and prosecute

to judgment and final determination proceedings in *quo warranto* for the forfeiture of the corporate rights, privileges and franchises of any such corporation so offending; or by *mandamus* or other proper proceedings to compel it to do its duty in that behalf.

SEC. 5. Every officer of a corporation or member of an association or co-ownership, and any superintendent or agent violating any of the foregoing provisions of this article, shall be liable to restore the unlawful consideration extorted, and be punishable under the penal provisions of this article, the same as if the thing done in disobedience to its provisions were done for his sole benefit and advantage.

SEC. 6. Every person, association or corporation owning or controlling any ditch or conduit for carrying water for irrigation shall, from the fifteenth day of April to the fifteenth day of November in each year, so far as may be reasonably practicable, keep therein a flow of water sufficient to supply and discharge the amount to which all or those lawfully entitled to the use of water therefrom, may be entitled.

SEC. 7. The proprietors of every reservoir for the collection or storage of water for irrigation, which waters in whole or in part, are sold or leased to other persons, shall use reasonable diligence to keep the same at all times in good order and repair and ready to receive, hold and discharge the waters, which by means thereof the proprietors of such reservoir are entitled to collect or store.

SEC. 8. The proprietor of all such works shall construct and maintain necessary outlets and gates in such ditch, or conduit, or in the ditch or conduit conveying water from any such reservoir, for the convenient delivery of water to the persons entitled to the use of water from such works; *Provided, however,* That where two or more of the persons entitled to the use of water from



such works can be conveniently supplied from one outlet, a second or other outlets shall not be required; and a multiplicity of outlets in any ditch or conduit shall at all times be avoided so far as practicable. The location of such outlets shall be under the control of the manager or superintendent of such ditch, conduit or reservoir, and the same shall be located at the places most convenient and practicable, having reference to the protection and safety of the works and the convenient distribution of water therefrom among those entitled to the use thereof; *And provided, further,* That nothing herein contained shall be construed to prohibit the proprietors of any such works from agreeing with those entitled to the use of such waters, to construct or maintain such outlets and the gates thereof. Every such gate shall be constructed with embankments of height and strength sufficient to control and exclude the water at all stages and shall be so constructed and arranged that the gate may be set and locked at any place, so as to exclude any part of such waters. The proprietors of any such ditch, conduit or reservoir failing, refusing or neglecting to construct such gate in any outlet or place of discharge of the waters furnished from such works, conformably hereto, when thereto required by any consumer of water from such works, and every person using such water who by such agreement with the proprietors of such works is obligated to construct such gate, so failing, neglecting or refusing, shall be fined in not less than five dollars for each day of his default in that behalf.

SEC. 9. It shall be the duty of the superintendent of every such ditch, conduit or reservoir to measure the water therefrom through the outlets to those entitled thereto, and in time of scarcity to apportion the waters flowing in such ditch or conduit, or collected in such reservoir among those entitled thereto, ratably, and according to the amounts to which they are severally



entitled. Where any such ditch, conduit or reservoir hath, subsequent to the original construction been enlarged, the water diverted, collected, conveyed or stored by means of such enlargement, shall be distributed and apportioned in like manner. The several consumers of water under any lateral, may at any time, by vote of a majority thereof, appoint a superintendent to such lateral, who shall be charged with the distribution of the water allotted thereto by the superintendent of the ditch, among those entitled to the use of water from such lateral. A meeting may at any time be called by not less than two of the consumers under such lateral, by notice in writing specifying the time, place and purpose thereof, for electing such superintendent or removing him and appointing another. Such superintendent shall hold his office during the pleasure of the consumers of water from such lateral, or a majority of them, and shall receive only such salary or compensation as they may appoint.

SEC. 10. Any superintendent having charge of any such ditch, canal, conduit or reservoir, who shall willfully neglect or refuse to deliver water as in this act provided, to any person entitled thereto, shall on conviction thereof be fined not less than ten dollars, and not more than one hundred dollars, or be imprisoned in the county jail for not less than one month, or punished by both such fine and imprisonment; and the proprietors of such works shall moreover be liable in damages to the person or persons deprived of the use of water to which he or they were entitled, as in this act provided.

SEC. 11. Any person having by lease, purchase or agreement, written or oral, procured from any carrier water for the irrigation of lands, or for other use whatsoever, and having actually applied such water to beneficial uses, shall thereafter in every year, upon payment of the reasonable rate therefor prescribed by the County Commissioners (or if no such rate hath been prescribed,

then at a reasonable rate and price not exceeding that at which such carrier hath been wont to supply water to others during the year then last preceding), be entitled to continue in the enjoyment of water from the works of such carrier to the same amount; *Provided, however,* That nothing herein contained shall be deemed to enlarge the effect of any grant, lease or other agreement by any carrier for the use by one person during any limited period, of water to the use or enjoyment of which by lawful grant, lease or agreement of such carrier theretofore made, any other person is entitled, such person so entitled to the use of such waters not then having need or occasion therefor, nor to entitle any person to resume the use or enjoyment of water after having once abandoned the same, nor after having failed or refused to pay the reasonable rate lawfully demanded therefor by the carrier in any year, nor to require the carrier to supply water to persons persistently refusing to comply with the reasonable regulations prescribed by such carrier for the government of the distribution of water from its works.

SEC. 12. The several persons and corporations first lawfully using and enjoying water customarily diverted, carried or stored by any ditch, conduit or other works to the amount reasonably sufficient and efficient for the uses to which the same shall be so applied, shall be deemed and taken in the distribution of such waters to be of equal right and of the same priority; and as against such persons and corporations, all grants, leases, covenants and agreements whatsoever for the delivery or use of water out of such works, by other persons, shall be deemed and taken to be utterly void, and as between the grantees, lessees, covenantees, and contracting parties therein respectively shall have effect as of the date when such persons severally began to use and enjoy the waters claimed by virtue thereof.

SEC. 13. Any person entitled to use or enjoy otherwise than for domestic uses any part or share of the waters diverted, conveyed or stored by any ditch, conduit or other works, may exhibit in the District Court of the county whereunto by this act is committed jurisdiction to settle and determine the rights and priorities of the several appropriators of water in the Water Division, his complaint praying the Court to establish the rights of the several persons entitled, or claiming to be entitled, to use and enjoy the waters diverted, carried or stored by means of any such works.

SEC. 14. Every such complaint shall set forth: The name of such works; the county or counties wherein the same are situate; the several counties wherein waters diverted, carried or stored thereby, have been theretofore at any time used, so far as known; the amount of water actually diverted, collected or stored by means of such works and theretofore customarily applied to beneficial uses, and as nearly as may be the amount to which the same have been reasonably sufficient therefor; the right of the plaintiff in that behalf and the amount of water to the use whereof, out of such works, he claims to be entitled; the foundation of his claim thereto, whether by deed, lease or other agreement or license of the proprietors; the date of such agreement and the time when such plaintiff or his predecessors in the use and enjoyment of such waters first began to make application thereof to beneficial uses, and shall name as defendants thereto the proprietors of such works and all mortgagees or encumbrancers thereof, and the persons claiming to be entitled to use and enjoy the waters thereof; or if such persons are very numerous, one or more of such persons shall be named as defendants, and all other persons claiming to be entitled to use or enjoy the waters of such works shall be made parties defendant by the title: "All other consumers of water" from such works, designating the same.



SEC. 15. Upon the filing of such complaint, the Clerk of the Court shall issue a summons as in other cases, save that the same shall be made returnable not less than thirty days thereafter, and the plaintiff in such action shall cause the same to be published for at least four weeks consecutively next before the return day thereof, in at least one public newspaper published in each county wherein the said works are situate, or wherein the waters therefrom have been theretofore, so far as known, customarily used; or in case there be no such newspaper published in any one of such counties, shall cause the said summons to be posted in at least five public places in such county for at least four weeks prior to the return day thereof.

SEC. 16. At any time within ten days after the return day of such summons, or afterwards by leave of the Court, any person claiming to be entitled to the use or enjoyment of water from such works may appear and be made party in the said cause, either as plaintiff or defendant, setting forth either by supplementary complaint, or by answer, the claim made by him to the use of water from such works, and the same particulars touching such claim of right as above required in the complaint. And thereupon the Court shall appoint a Referee to attend at such times and in such places in the several counties as may be fixed in the order of the Court in that behalf, to hear and report to the Court all such testimony as may be produced before him touching the amount of water lawfully diverted, carried or stored by such works within reasonable time after the commencement thereof, and the names of the persons who first used or enjoyed the same to the amount to which the same were or may be reasonably sufficient for the uses to which the same were or are applied, their heirs or assigns; the several times when such persons first began to use and enjoy such waters and the uses to which the same were applied as aforesaid; and touching any aban-



donment or loss by any such persons of their right in that behalf; and touching any other matter or thing which may be set down in the order of the Court as a proper matter of inquiry. *Provided*, That wherever in the case of works constructed or used for supplying water for irrigation, a decree has been had pursuant to the eighth Article, establishing the rights and priorities of the several appropriators of water in such Water Division, such decree shall be deemed and taken to be conclusive as between the proprietors of such works and those entitled to enjoy and use the waters therefrom, as to the maximum capacity of such works, unless it shall be made to appear that subsequent to the entry of such decree the proprietors of such works have by appropriation or otherwise become entitled to divert, carry or store other waters.

SEC. 17. Every such Referee shall, before entering upon the discharge of his duties under such appointment, file in the office of the Clerk of the Court the oath required by the eighth Article, and at the several times and places named in the order of the Court in that behalf, shall attend and hear and reduce to writing all testimony which may be offered by any person touching the matters named in the order of the Court in that behalf, and shall in all respects touching such hearing, proceed in manner as specified in the eighth Article for the government of the Referee therein mentioned, so far as such requirements can be made reasonably applicable.

SEC. 18. Any person claiming to be in any manner entitled to have, use or enjoy any part or share of the waters at any time diverted, conveyed or stored by means of such works, may in person or by counsel appear before the Referee and present testimony touching his claim in that behalf and the claim made by or in behalf of any other person, and cross-examine the witnesses produced by any other person, and object to any testimony offered by or in behalf of any other person.

SEC. 19. Upon the completion of the testimony before him the Referee shall file the depositions and all documentary evidence produced before him in the office of the Clerk of the Court, together with his report of his actings and doings as such Referee, and the Court or Judge thereof shall thereupon appoint a day when exceptions thereto will be heard, and at any time prior to the day so appointed, or afterwards by leave of the Court, any person may file exceptions to any of the testimony heard before the Referee, or to any of the proceedings of the Referee in or about refusing to receive any testimony, or denying to any person reasonable opportunity to be heard; and the Court, at the day appointed for hearing such exceptions, shall proceed in like manner as provided in the eighth Article touching the report of the Referee therein mentioned, and may, if he shall deem it necessary, order a further reference of the matter to the same or another Referee, or hear further testimony in open Court upon some day proper and convenient, by him appointed for the purpose.

SEC. 20. Whenever any testimony shall be heard in open Court, the same shall be at the time reduced to writing and certified by the Court, and together with the report of the Referee shall be deemed and taken to be part of the record in the said cause.

SEC. 21. After the testimony shall have been completed, and all exceptions to the report of the Referee determined, the Court shall appoint some convenient day, not less than thirty days thereafter, for final hearing, and shall cause a notice of such final hearing and the time and place appointed therefor, to be published in at least one public newspaper in each county wherein the said works may be situate, or wherein any part of the waters thereby diverted, carried or stored may be customarily used.

SEC. 22. Upon the final hearing the Court shall by its decree ascertain and determine:

*First*—The amount of water actually diverted and carried or stored in such works and applied to beneficial uses within reasonable time after the commencement thereof.

*Second*—The amount to which the water customarily diverted or carried or stored therein was reasonably sufficient for the uses to which the same was applied.

*Third*—The names of the persons first using the waters aforesaid to the amount aforesaid.

*Fourth*—The names of the persons, successors in interest to those first using such waters, to the amount aforesaid, and the several amounts to which the said persons are entitled to the use of such waters, and the purposes for which, and the lands, works or places in respect to which, the same have been theretofore and then are, customarily used.

*Fifth*—The same matters and things touching each enlargement of such works theretofore made; and

*Sixth*—The names of all other persons who by means of any grant, covenant or license of the proprietor of such works are entitled to the use of such waters; and shall by its decree declare that as against the persons first using the waters actually diverted, carried, collected or stored by means of such works to the amount to which the same were reasonably sufficient and efficient for the service to which the same were applied, their heirs, successors and assigns, all subsequent grants, covenants, agreements and licenses for the use of waters from the said works, were and are absolutely void, and shall restrain and enjoin the proprietors of such works, their heirs, successors and assigns from delivering or permitting to flow out of such works any water whatsoever, until the persons first having so used and enjoyed the waters thereof to the amount to which the same were reasonably sufficient for the uses to which the same were applied, their heirs and assigns, shall have received the



amounts to which they appear by the said decree to be severally entitled; and as to all such subsequent grantees, lessees and covenantees shall decree them entitled to enjoy such waters, as of the date when they or their predecessors in interest first began to use and enjoy the same, and only to the extent of such use and enjoyment.

SEC. 23. Costs shall be adjudged in such cases as to the Court shall seem equitable.

SEC. 24. Where in any case grants, agreements, or licenses have been made or entered into or granted by the proprietors of any such works for the delivery or use of water therefrom by the inch or acre, or otherwise than by the cubic foot per second of time, the Court shall ascertain and determine the amount of water to which such grantee or licensee is entitled in cubic feet per second.

SEC. 25. Appeals and writs of error shall lie for reviewing any such final decree in like manner as prescribed in the eighth Article, and such appeal shall be prosecuted and proceeded in as therein prescribed.

SEC. 26. The proprietors of any ditch, conduit, reservoir or other works for the diversion, carriage, retention or storage of waters, may procure the waters to which they are entitled, to be carried, stored and distributed from and through like works of any other proprietor upon such terms as may be agreed upon between them without in any manner impairing or affecting their right of priority in respect of such waters; *Provided, however,* That thereby the waters supplied to any consumer be not diminished; *And provided, further,* That no such agreement shall be carried into effect until the original thereof be filed in the office of the State Engineer, and the State Engineer shall certify to the persons so agreeing his approval thereof. The State Engineer may at any time withdraw such approval and



prohibit the further carrying into effect of such agreement, if it shall appear to him that the proprietors of other works or those consuming waters therefrom, are injured by means thereof.

During the time of the carrying into effect of such agreement no water shall be turned into the ditch or other works first named at the head thereof and seepage waters collected therein shall always be turned out of the same into the ditch, conduit, reservoir or other works next below, without distributing or using such seepage or flood waters.

## ARTICLE X.

PROVISIONS FOR REGULATING THE PROCEEDINGS OF THE BOARD OF COUNTY COMMISSIONERS IN DETERMINING THE RATES OF COMPENSATION TO BE CHARGED FOR THE USE OF WATER.

SECTION I. Whenever the proprietor or proprietors of any ditch, conduit, reservoir or other works constructed for the diversion, conveyance or storage of water for distribution among such proprietors or the members or shareholders in the corporation holding or owning such works, or others, or any person entitled or claiming to be entitled to the use of water from such works, shall present to the Board of Commissioners of such county, wherein such persons are using or enjoying, or entitled to use or enjoy water from such works, at any session thereof, regular or special, a petition praying the Board to proceed to fix reasonable maximum rates of compensation to be charged for the use of water from such ditch, conduit or reservoir within such county, showing reasonable cause for such application and verified by the affidavit of the petitioner, such Board of Commissioners shall examine the same, and if from such petition, or from affidavits or testimony produced in support thereof, they shall be of the opinion that such application is made in good faith, and that

there is reasonable ground to believe that the rates charged or proposed to be charged by the proprietors of such works are excessive, or that for any reason the rates of compensation to be charged for the use of water from such works ought to be fixed, they shall enter an order appointing a day, not less than twenty days thereafter, nor later than the third day of the next regular session of such Board, when they will hear all parties interested in such works, or in procuring water therefrom, for any uses whatsoever, touching the rates to be charged for the use of water therefrom; and the Clerk of the Board shall cause such order to be published in at least one public newspaper published in such county, at least ten days prior to the time appointed for such hearing.

SEC. 2. The petitioner in such petition shall, within five days after the entry of such order, cause copies thereof, conspicuously printed, in type not less in size than the type known as great primer, to be posted in at least ten or more public places in that part of such county to which water is supplied from such works, and shall, if such petition be not presented by or on behalf of the proprietors of such works, cause a copy of such order to be also served upon some one or more of the proprietors of such works, the president or other chief officer of the association, corporation, proprietors of such works, if the same be owned by a corporation, or upon the superintendent thereof, at least ten days prior to the day appointed for such hearing. Such service may be made either by delivery of a copy of the order personally to such proprietor or officer, or by leaving such copy at his usual place of abode with some person over the age of fifteen years, and informing such person of the nature and contents thereof. If such works be owned by an association or corporation and no such officer or superintendent thereof can be found, service of the said notice may be made upon any member or shareholder therein, other than the petitioner.

SEC. 3. If no one of the proprietors of such works, and no member or shareholder of the association or corporation owning the same can be found at the county where said proceedings are instituted, service of a copy of such order may be made at any other county, or by publication at said county where the proceedings shall be pending, for the additional space of twenty days.

SEC. 4. Proof of the service of such order may be made by the affidavit of any disinterested person cognizant of the facts, and proof of the publication thereof by affidavit of the publisher of the newspaper wherein publication is had.

SEC. 5. If at the day so appointed for the hearing of such petition, due service of such order hath not been had upon the proprietor or proprietors of such works, or publication made in lieu thereof, or if such order hath not been posted and published as herein required, the Board shall adjourn the hearing of such petition for a sufficient time in order that the defect of notice in that behalf may be supplied; and the Board shall not proceed to hear or determine such petition until due publication and posting of such order and due service thereof on the proprietor or proprietors, or publication in lieu of such service, as herein above required.

SEC. 6. When it shall appear to the Board that the foregoing requirements touching the publication, posting and service of such order have been complied with, the Board shall proceed to hear and determine such petition without unnecessary delay. All persons interested in the said works, or entitled, or claiming to be entitled to the use or enjoyment of water therefrom at the said county wherein the proceedings are pending, shall be entitled to attend and be heard either in person or by counsel touching the said application, and to produce evidence touching the original cost of such works, and of all additions thereto or enlargements thereof, and repairs and replacements.



thereof, or of any part or appurtenances thereof, and the reasonable value at the time of such hearing, and the reasonable annual cost and expense of the maintenance and operation thereof, and of the distribution of water therefrom, and the capacity thereof, and the amount of water consumed or furnished therefrom as originally constructed, and subsequent to any enlargement thereof, either for the use of the proprietors or others, and the amount of loss or waste therefrom by evaporation or seepage, and touching any other matter or thing which may affect the reasonable maximum rates which ought to be charged to the several classes of persons using water therefrom, for the use of water to be furnished or delivered from such works.

SEC. 7. Upon hearing and consideration of the evidence which may be produced before them, as well as the arguments of counsel attending, if any, the said Board of Commissioners shall enter an order naming the ditch, conduit, reservoir or other works in question, or otherwise describing the same with reasonable certainty and fixing reasonable maximum rates of compensation to be charged for water to be delivered out of such works for use within such county for any purpose whatsoever.

SEC. 8. Every such order shall adjust such rate according to the distance of carriage, and so that for each mile or fraction thereof, not less than one-half mile, through which the water is carried, a reasonable increase be made in the maximum rate to be charged in that behalf; and whenever it shall appear that there hath been an enlargement or enlargements of the ditch, conduit or reservoir, and that those using the waters diverted, collected or stored by means of such enlargement are customarily or frequently in times of scarcity deprived of water, when those using the waters diverted conveyed, collected or stored by means of such works as originally constructed are receiving water, or wherever



the proprietors of any works for the diversion and conveyance of water have agreed for delivery thereof in excess of the amount customarily carried in such works, and the persons with whom such agreements have been made, or any of them, or their successors in interest, shall collect and store water and deliver the same to such carrier to an amount not exceeding the capacity of such works, a reasonable diminution shall be made in the maximum rate to be charged to those using the waters diverted, collected, retained or stored by means of such enlargement, or those collecting and storing water to be carried in such ditch or conduit; and the maximum rate prescribed to be charged to those using the water during the whole of the year, may be varied from that prescribed to be exacted of those using the same during only the irrigating season, or some part of the year; and a greater maximum rate may be prescribed to be exacted from those using the water only occasionally, or during brief spaces of time, than that prescribed to be exacted from those customarily using the same; and the rate to be exacted for waters stored in reservoirs may be varied from the rate prescribed to be charged for water delivered without storage, according as right and justice may seem to require. Every such order shall be in force for the term of two years next thence ensuing, unless reversed or modified upon appeal or writ of error as herein provided, or upon like notice as herein required upon the original petition, and due cause shown therefor, the same shall be changed by the board of County Commissioners, and until other order made in the premises, after the lapse of such period.

SEC. 9. If it shall appear to the Board that the rates theretofore customarily charged, or proposed to be charged, by the proprietors of such works, for the use of water therefrom, have not been nor are unreasonable, or excessive, and that to prescribe or fix the maximum rate is unnecessary or inexpedient; the Board may dis-

miss the petition, or in their discretion, adjourn the matter to another day; and continuances of the hearing may be granted from day to day or for any time, in the discretion of the Board.

SEC. 10. Depositions may be taken to be read before the Board of Commissioners upon the hearing of the said petition in like case and manner, and upon like notice given, as required in causes pending in the District Court.

SEC. 11. Any member of the Board may, under his hand and seal, issue subpœnas, or subpœnas *duces tecum*, requiring the attendance of witnesses to testify in such matter before the Board at any day and hour which may be named therein; all which subpœnas may be served by the Sheriff or any Constable of the county, or other person whomsoever; and the Board may, by subpœna or otherwise, require the proprietor of the works, or any officer, agent, clerk, servant or employé of the corporation or association, proprietor of the said works to attend and produce at the said hearing any book, paper or writing containing, or supposed to contain evidence pertinent to the matter in question.

SEC. 12. Any member of the Board may administer an oath or affirmation to any witness produced before it upon any such hearing; and any person who shall testify falsely, after being duly sworn or affirmed as a witness, shall be deemed guilty of perjury and upon conviction be punished accordingly.

SEC. 13. The Sheriff or any Constable of said county serving any subpœna, order or other process in such proceeding, shall be entitled to the same compensation as in case of like process out of the District Court.

SEC. 14. Witnesses shall be entitled to the same *per diem* and mileage as witnesses attending in the District Court of the same county.

SEC. 15. Any person failing to obey the subpœna of the Board, or any member thereof, in any such proceeding, upon payment or tender of his lawful compensation in that behalf, shall, on proof of such service, and payment or tender, and the non-attendance of the witness, before the District Court, or before the Judge thereof in vacation, be attached for his contempt in that behalf, and punished by such District Court or Judge thereof, if no reasonable excuse for his default be shown, as in case of like contempts of such District Court.

SEC. 16. If it shall appear to the Board upon such hearing that the rates theretofore customarily charged by the proprietors of such works, or proposed to be charged for the use of water therefrom, are excessive and extortionate, the cost of such proceeding shall be taxed against the proprietors of such works. If it shall appear to the Board that such petition was presented without any good cause therefor, the costs shall be taxed against the petitioner. In other case the costs shall be divided as to the Board shall seem equitable. No party shall be permitted to examine more than four witnesses to establish the same matter of fact.

SEC. 17. If either member of the Board of County Commissioners, wherein such petition is presented, be interested in the works named in such petition, as proprietor or incumbrancer thereof, or be a consumer of water therefrom for any purpose whatsoever, he shall cause the fact of such interest to be suggested and entered of record, and thereupon an order shall be made changing the venue in such proceeding to some other county where no part of the ditch, conduit or other works named in such petition is situate, and where no water from such works is furnished to the inhabitants of such county.

SEC. 18. If the proprietors of such works or any consumer of water therefrom, shall file with the Board of County Commissioners, before which such petition is



pending, a petition showing such interest as above prescribed, or that by reason that either of the said County Commissioners is prejudiced for or against the proprietor or proprietors of said works, or any of them, or is related to them or any of them, or hath been of counsel for the proprietors of such works, or any of them, touching the matter of controversy in said petition mentioned, or that the proprietors of such works have an undue influence over the minds of the inhabitants of said county wherein the petition is pending, or that the inhabitants of such county are prejudiced for or against the proprietors of such works, so that a fair determination of the matter cannot be expected, and shall verify such petition by affidavit, such Board of County Commissioners shall consider the same and all counter petitions and affidavits, touching the matter, which may be presented, and if of the opinion that the matters and things in such petition alleged as cause for change of the venue of such petition are true, shall order such petition to be sent to the Board of Commissioners of some other proper county where such cause of objection doth not exist; *Provided, however,* That no change of venue shall be allowed in such case until due publication, posting and service of the order for hearing, as herein above prescribed, has been had.

SEC. 19. At the time of the entry of any such order for the change of venue of such petition, such Board of County Commissioners shall also by order fix a time not less than ten days thereafter when, at some convenient place in their county, to be named in such order, depositions may be taken before some Justice of the Peace, Notary Public or Clerk of the District Court, or County Court, in behalf of every person interested in the question of the reasonable maximum rates which ought to be charged for the use of water supplied from such works, or any matter of fact bearing upon the question; and at the time and place named in such order



and from thence from day to day, or as the convenience of the parties may require, the Justice of the Peace, Notary Public or other officer named, shall attend at the place in such order mentioned, and take the depositions of all witnesses produced before him by any party, for examination; and any party claiming to be interested in the controversy may attend and examine or cross examine every such witness. Such depositions shall be reduced to writing by or under direction of such officer, in the narrative form, (save where as to any particular matter any party may request that the interrogatory and answer be set down,) and upon the completion of the examination of all witnesses produced, the same shall be certified to by the officer taking the same, and transmitted to the Clerk of the Board of County Commissioners of the county to which the venue is changed. Every such deposition shall show and set forth in whose behalf the witnesses are severally produced; and the officer shall affix a memorandum subscribed by him, showing by whom the fees of such witnesses for their attendance, and his fees for the taking of such depositions are paid, and the amount of such fees.

SEC. 20. Forthwith after the entry of any such order for the change of the venue of such petition, the Clerk of the Board of County Commissioners shall certify a copy of such order and all other orders and proceedings had by the Board in the matter of such petition, and attach thereto the original petition, and all affidavits and other proceedings had or filed therein, and transmit the same to the Clerk of the Board of County Commissioners to which the venue is changed.

SEC. 21. At the next regular session of the Board of Commissioners of the county last named, like proceedings shall be had as above prescribed for the Board of Commissioners of the county wherein such petition was presented.

SEC. 22. An appeal or writ of error shall lie in behalf of the proprietors of such works, or any person using or claiming to be entitled to use water therefrom, for review in the Supreme Court of every final order upon such petition; and the party appealing may assign for error not only the final order, but the order of the Board of County Commissioners wherein such petition was presented, refusing or denying any petition for change of venue presented therein; *Provided, however,* That such appeal be prayed within thirty days, and such writ of error sued out or applied for within two years, next after the entry of such final order.

SEC. 23. The petition and all affidavits, the petition for change of venue, affidavits supporting or controverting the same, and depositions filed in the matter, shall be deemed and taken as part of the record upon such appeal or writ of error; and all evidence heard orally shall be made part of the record by bill of exceptions or certificate subscribed by such Board of County Commissioners, or any two of them, and filed with the Clerk of the Board at any time within ninety days after the entry of such final order.

SEC. 24. If in any case no two of the Board of County Commissioners, wherein such final order is presented, will allow such bill of exceptions or certificate of testimony, it shall be lawful for the party representing the same to take the affidavit of two or more persons present at the hearing, and when the testimony set forth in such bill of exceptions or certificate was given, as therein set forth, that the same is correct and true, and when so attested and proved by affidavit, the same shall be filed by the Clerk and become part of the record in like manner, and with like effect, as if signed by two of the County Commissioners.

SEC. 25. No such appeal or writ of error shall operate as a *supersedeas*, save by order of the Supreme Court, or one of the Justices thereof, and bond given payable to

The People of the State of Colorado, with sureties approved by the Clerk of the Supreme Court (or the Clerk of some District Court when the order so directs) and conditioned for the due prosecution of such appeal or writ of error, and to make good all damages which may be sustained by any person by reason of such *superse-  
deas*. Such bond shall be in such sum as may be fixed and prescribed in the order allowing the *supersedeas*.

SEC. 26. In every such appeal or writ of error, where presented in behalf of the proprietors of such works, the appellees or defendants in error shall be designated as "The Consumers of Water in-----  
County," from such ditch, canal or other works, naming the same. The *scire facias* to hear errors shall be served upon the petitioner in such petition, if he can be found, and shall be published in at least one public newspaper of the county wherein the petition was originally presented, for at least thirty days prior to the hearing, and such publication shall be deemed to confer jurisdiction upon the Supreme Court in respect to all persons. Whenever any individual, consumer or any person claiming to be entitled to water from such works, shall be appellant or plaintiff in error, the proprietors of such works shall be designated as the appellees or defendants in error. In either case all persons whomsoever claiming to be interested in the question shall be heard by counsel in the Supreme Court.

SEC. 27. Save as herein provided, the proceedings upon such appeal or writ of error, shall be as in other cases, as near as may be.

SEC. 28. The costs of such appeal or writ of error shall be adjudged in the discretion of the Court.



## ARTICLE XI.

## OF THE ROTATION OF WATER.

SECTION 1. The several persons entitled to the use of the water diverted, carried, collected or stored by means of any ditch, conduit, reservoir or other works, or the waters lawfully allotted to or carried by any lateral, sub-lateral or distributing conduit, of any ditch, conduit or other works, supplying water to two or more consumers, may in writing agree among themselves, that the waters of such ditch, conduit, reservoir, lateral or other works may and shall be rotated, distributed and delivered upon particular days or parts of days to particular consumers, and on other days to other consumers, as may be in such agreement specified; and any such agreement may provide for such rotation during any one season, or part of season; and at the expiration of the time therein mentioned the rights of all the parties shall be the same as previous to the making of such agreement.

SEC. 2. Any number of the consumers of water from any ditch, conduit or reservoir, or any lateral or distributing conduit receiving water from any such works, may in writing agree among themselves for the rotation of the water to which they are severally entitled, and the delivery thereof upon particular days to particular consumers during such seasons, season, or part of season, as in such agreement may be specified; *Provided, however,* That the rotation of the water to which the several consumers, parties to such agreement, may be entitled, shall not be conducted in such manner as to diminish the supply of water to which any other consumer under such ditch, conduit or lateral may be entitled.

SEC. 3. The proprietors of two or more ditches, conduits, reservoirs or other works, taking water from the same stream or source of supply, may, by consent in



writing of those entitled to the use of water therefrom, agree in like manner for the rotation of the whole or any part of the water lawfully allotted from such stream or source of supply to such ditches, conduits or other works in such way and manner, and for such time as may be in such agreement specified; *Provided, however,* That the rotation of the water to which the several consumers, parties to such agreement, are entitled shall not be conducted in such manner as to diminish the supply of water to which any consumer of water from any other ditch, conduit or other works may be entitled.

SEC. 4. Whenever any agreement shall be entered into for the rotation of the water of any ditch, conduit, reservoir or other works, or any lateral of such ditch, or conduit or any part of such water, among those entitled to the use of such water, such agreement or one part or copy thereof shall be delivered to the superintendent of the ditch, conduit, reservoir or lateral, and be by him carefully preserved, and he shall cause the water to which the parties thereto may be entitled to be rotated and distributed conformably to the said agreement, during the time mentioned therein for the continuance in force of such agreement.

SEC. 5. Every agreement entered into between the proprietors of two or more ditches, conduits, reservoirs or other works, taking water from the same stream or source of supply, for the rotation of the waters thereof, in manner as hereinbefore provided, shall be delivered to the State Engineer for his approval, and the Water Commissioner, upon the approval of such agreement by the State Engineer shall, during the period mentioned in such agreement, rotate and distribute the waters to which the proprietors of such ditches, conduits, reservoirs or other works may be entitled, conformably to the said agreement. The State Engineer shall not approve or allow any such agreement to go into effect if it shall seem to him manifestly injurious to the proprietors of

other ditches, canals or works, or the consumers of water therefrom, and he may, if after experiment the execution of such agreement be found injurious to other persons, retract his approval thereof and prohibit the further rotation of the waters pursuant to such agreement, or prescribe conditions to the further observance of such agreement.

SEC. 6. The proprietors of any ditch, conduit, reservoir or other works in the same water division not party to such agreement, or any consumer of water therefrom, shall be entitled to a rehearing of the matter before the State Engineer, at any time within two months after the approval of such agreement. Reasonable notice of every such application for rehearing shall be given to the proprietors of the ditches, conduits, reservoirs and other works, parties to such agreement, and the State Engineer, may require like notice to be given to all others in interest by publication as may be by him prescribed. The proprietors of any ditch, conduit, reservoir or other works in the same Water Division, or any consumer of water or person entitled to the use of water from any such works, shall be heard, and the State Engineer shall make such order in the premises as right and justice may require; *Provided, however,* That during the pendency of any such application for rehearing the Water Commissioner shall cause the waters allotted to the ditches, conduits, reservoirs or other works, the proprietors whereof are parties to such agreement, to be distributed and rotated conformably to such agreement. Nothing herein contained shall be so construed as to prohibit any person from applying to the District Court whereunto by this Act is committed jurisdiction for the adjudication of the rights and priorities of the appropriators of water in such Water Division, for relief against such agreement, or to prevent the execution thereof.

SEC. 7. No agreement for the rotation of water shall in any manner impair or affect the rights of any prior incumbrancer of lands theretofore customarily irrigated by any part of the waters mentioned in such agreement, he not being a party to such agreement; nor shall such agreement, or the rotation of the waters pursuant thereto, in any manner affect or impair the rights or the priority of right of the parties thereto, or the persons using or entitled to use the waters referred to in such agreement, or any of them as against other persons.

SEC. 8. Whenever any such agreement for the rotation of water, either between or among several ditches, conduits, reservoirs or other works, or among those entitled to the use of the waters of any ditch, conduit, reservoir or other works, or any lateral therefrom or any part of such water, shall be for a space exceeding one season, the same shall be recorded in the office of the Recorder of the county wherein is situate the head-gate of such ditch or conduit or wherein is situate such reservoir, or the head of the lateral.

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## ARTICLE XII.

### OF SUBTERRANEAN WATERS AND ARTESIAN WELLS.

SECTION I. Waters flowing in well defined subterranean channels and courses shall be subject to appropriation with the same effect as the water of superficial channels, and no person shall be allowed by drains, ditches, subterranean galleries or other like works, to collect and divert percolating waters manifestly supplying such subterranean channel, to the prejudice of any prior appropriator thereof; *Provided, howsoever,* That nothing in this section contained shall be so construed as to render any person liable in damages for the diversion or obstruction of the flow of subterranean waters by lawfully excavating for cellars, or for mining, quar-



rying or carrying on like works on his own lands, nor for excavating drains for draining and improving his own lands, nor so as to prohibit the proprietor of any lands from sinking wells therein, and thereby collecting the waters percolating through such lands and by means of pumps, buckets and other appliances, withdrawing the same for beneficial uses.

SEC. 2. No person shall be permitted to take or appropriate the waters of any subterranean channel which naturally discharge into any superficial stream, to the prejudice of any prior appropriator of the water of such superficial channel.

SEC. 3. Any person sinking or boring for an artesian well shall cause to be kept thereat a record of the work, setting forth the name and post-office address of the proprietor of such well, or the person causing the same to be sunk or bored, the name of the contractor therefor, and the name of the person actually in charge of the work; the particular location thereof, specifying, if upon surveyed lands, the particular forty acres and the part thereof whereon the same is situated; if in any city or town the particular lot or block or other subdivision upon which, or nearest to which, the same is situate; or if on unsurveyed lands the location thereof by reference to permanent natural monuments so as to identify the same with reasonable certainty; the date of commencement of work in sinking or boring such well (which may be the commencement of the work of placing machinery therefor), all suspensions of the work, and the duration and cause of such suspension, the time of completion of the work or final cessation thereof; the different strata passed through and the depth at which each thereof shall be reached, and passed, as near as may be, showing also each flow of water obtained, and each vein of water or water bearing stratum passed through, and the depth thereof from the surface, numbering each such flow or vein of water consecutively from



the surface, and the height to which, or the distance from the surface, the water rises in such well after penetrating each separate flow or vein of water; and at the completion of the well or at the cessation of work thereon, he shall, without first closing or shutting off the flow therefrom, cause to be ascertained the flow thereof, if a flowing well, in cubic feet per day of twenty-four hours; and within a period of thirty days next after completion of such well or the cessation of work thereon, the proprietor thereof shall make or cause to be made and filed in the office of the State Engineer, and in the office of the County Clerk and Recorder of the county wherein the said well is situate, a statement or certificate verified by his affidavit or the affidavit of the person in charge of the work, setting forth all the matters aforesaid, the particular vein or flow of water claimed to be appropriated by means of said well, and the total amount of water so claimed to be appropriated, in cubic feet per day of twenty-four hours, if such well be a flowing well, (otherwise the distance from the surface at which the water customarily stands), what part or parts of such well is or are cased, and the interior diameter or diameters of such casing or casings.

SEC. 4. Every person who is the proprietor of, or entitled to the waters of any artesian well heretofore sunk or bored, shall, within ninety days after this act takes effect, make and cause to be filed in said offices a like statement setting forth all the foregoing matters so far as within his knowledge, and according to the best of his knowledge, information and belief.

SEC. 5. The State Engineer shall prepare and transmit to the County Clerk of each of the counties, printed blanks for such statement, and may require to be inserted therein information touching any other matter which may seem to him necessary to be known in order to the proper regulation of the subterranean waters of the State. The State Engineer and the County Clerk

shall deliver copies of such blanks, in reasonable number, to whomsoever may apply therefor, and every such statement filed as required by this article shall be made upon one of such blanks or according to the form prescribed thereby, with the necessary changes.

SEC. 6. Every person sinking or boring for an artesian well, shall, before filing the statement required hereby, cause to be placed in such well a proper and sufficient casing of strength sufficient and so arranged and placed as to prevent the caving in of strata of clay, sand or other unconsolidated matter carrying water, not appropriated or claimed by the proprietor of such well, and shall so case such well as to prevent the escape of the waters thereof into such strata, and shall cause the same to be furnished with such appliances at or near to the surface, as will readily and effectively arrest and prevent the flow of water from such well.

SEC. 7. Every person complying with the provisions of this article and applying the waters obtained by means of such artesian well to beneficial uses, shall be deemed to have appropriated such waters to the extent to which the same shall be so applied within a reasonable time after the commencement of the works, and such appropriation shall have effect as of the day of commencement of such work, provided the same is prosecuted with reasonable diligence—otherwise from the time of the application of the waters thereof to beneficial uses.

SEC. 8. No person controlling an artesian well shall suffer or permit the waters thereof to flow to waste, unless, and so far as reasonably necessary, to prevent the obstruction thereof, or to flow or be taken therefrom save for beneficial uses; *Provided*, This shall not be so construed as to prevent the reasonable use of such water for the necessary irrigation of trees standing along or upon any street, road or highway, or for ornamental ponds or fountains or the propagation of fish.

SEC. 9. Any Water Commissioner or his assistant, the County Commissioners, Road Overseers and Aldermen, or other City Officers within their respective counties, districts, cities and towns, upon complaint of any person that the proprietor of any artesian well, or person controlling the same, is wont to suffer the waters thereof to unnecessarily run to waste therefrom, or hath in any respect violated this act, may at any reasonable hour of the day or night, enter upon any premises where such well is situated, for inspecting the same, and for ascertaining whether there is sufficient cause for such complaint, and in order to institute, or cause to be instituted, criminal prosecutions for any violation of this act. And every person sinking or boring for an artesian well upon his own land, or suffering others so to do, shall be deemed in law to expressly license such entry of the officers aforementioned, or any of them, for the purpose of such inspection and examination.

SEC. 10. If any person in charge of the work of sinking or boring an artesian well shall fail, neglect or refuse to keep a record thereof, as required by this article, or shall fail, refuse or neglect to set forth therein, as nearly as may be, any of the matters or things hereby required to be set down in such record, or being the proprietor of such well hereafter sunk or bored, or proprietor of, or entitled to the waters of any such well heretofore sunk or bored, shall fail or refuse to make and record the certificate required by this article, or shall willfully and knowingly insert in such record, or in such certificate, any false statement touching any such matter, or shall cause or procure, or knowingly permit, suffer or connive at such omission or false statement, or being the proprietor of, or controlling any artesian well, shall suffer the same to flow without causing it to be furnished with such appliances as hereby required, for arresting and preventing the flow of water therefrom, or who, being the proprietor of, or controlling such well, shall knowingly permit the water



thereof to flow to waste unnecessarily and to the injury of others, or being in possession of, or controlling the premises where such well is situated, shall wilfully prevent any Water Commissioner, Assistant Water Commissioner, County Commissioner, Road Overseer, Alderman, or other city officer entitled by this act to visit and inspect the same from so doing, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding one hundred dollars or imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment in the discretion of the Court wherein conviction is had; and any person guilty of willful, false swearing to any such statement as hereby required, shall be deemed guilty of perjury and punished accordingly.

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### ARTICLE XIII.

OF UNLAWFUL INTERFERENCE WITH AND MALICIOUS INJURIES TO WORKS FOR THE DIVERSION, CONVEYANCE OR STORAGE OF WATER.

SECTION I. If any person shall unlawfully raise the head-gate of any ditch, conduit or reservoir for the diversion, conveyance, retention or storage of water for domestic, agricultural, or other uses whatsoever, after the same hath been set and placed by or pursuant to the order of the Water Commissioner, Superintendent of Irrigation or State Engineer; or shall unlawfully raise the gate of any outlet, lateral or sub-lateral whereby such person is himself supplied with water, after the same shall have been lawfully set or placed by the Superintendent of such ditch, conduit, reservoir, lateral or sub-lateral; or shall close or lower the gate whereby any other person shall be supplied with water from any ditch, conduit, reservoir, lateral or sub-lateral; or shall by any way or means whatsoever willfully and unlawfully prevent any other person or persons from receiving the supply of water to which he or they may be lawfully



entitled; or shall willfully and maliciously cut or break down the head-gate of any such ditch, conduit or reservoir, or the gate of any feeder or lateral thereof; or shall willfully cut, excavate, throw down or open the embankment, side or other part of any such works, being the property of another, or in which any other person or persons may be joint owners with the person offending, or which may be in the lawful possession of any other person or persons, with intent maliciously to injure any person, association or corporation, or for his, her or their own gain, or with intent to unlawfully take or cause to run or pour out of such ditch, conduit or reservoir, flume, feeder or lateral, any water for his or their own use, profit, benefit or advantage, or for the use, profit, benefit or advantage of any person or persons not entitled thereto, and to the injury of any other person or persons, association or corporation lawfully entitled to use such water, or to the injury of the proprietors of such ditch, conduit, reservoir, flume, feeder or lateral, or other person interested therein, he, she or they so offending shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than five dollars nor more than three hundred dollars, and may be imprisoned in the county jail not exceeding ninety days.

SEC. 2. Any person so offending after conviction thereof once had, shall be punished by fine in not less than twenty dollars and not exceeding one thousand dollars, or by imprisonment in the penitentiary for not exceeding one year, in the discretion of the Court wherein such conviction shall be had.

SEC. 3. If it shall appear that upon two or more occasions within the same period of thirty days or less, water to the carriage, use or enjoyment whereof any person or corporation was entitled for any purpose, was diverted or flowed, without consent of such person or corporation into the works of any other carrier, or to

the field, meadow, mine, mill, manufactory or other works, or the habitation or premises, of any person or corporation not entitled thereto, this shall be deemed and taken as *prima facie* evidence that any improper diversion thereof afterwards during the same calendar year was caused or procured by the carrier into whose works or the person to whose field, meadow, mine, mill, manufactory, works, habitation or premises such waters were so improperly diverted or flowed.

SEC. 4. Nothing in this Article contained shall be construed to repeal any provision of the criminal code or other statute heretofore enacted.

## ARTICLE XIV.

### OF THE DRAINAGE OF LANDS.

SECTION 1. The proprietor of any lands which have become saturated by seepage waters flowing out of any ditch, conduit or reservoir, shall be entitled to cut and open drains and trenches or lay pipes or conduits for draining such lands and withdrawing the water therefrom and conveying the same into any natural stream or arroya; or may at his election convey such waters to other lands or places whatsoever and apply the same to domestic, agricultural, manufacturing or other purposes, in his pleasure.

SEC. 2. In order to cut such drains and trenches, or to lay such pipes and conduits, such proprietor shall be entitled to pass with the same over the intervening lands of others, if necessary. And in case of being unable to agree with the proprietors of such intervening lands touching the compensation in that behalf payable, or in case of the nonage or other disability, or absence of such proprietors, or any of them, or that such proprietors or any of them cannot be found, may cause such damages and compensation to be ascertained

in the manner prescribed by the laws at the time in force regulating the exercise of the power of eminent domain.

SEC. 3. Every proprietor of lands collecting waters by drainage thereof shall in like manner be entitled to have all such waters carried in any ditch, conduit or other works of any other proprietor to the places where the same are proposed to be used, and may cause the works of such other proprietor to be enlarged for the purpose, if necessary, as provided in the third Article.

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## ARTICLE XV.

### OF THE INCORPORATION OF WATER DIVISIONS AND WATER DISTRICTS.

SECTION 1. Whenever not less than thirty qualified electors residing within the limits of any Water District, shall present to the Governor a petition, praying that an election be ordered to determine the question whether such Water District shall be incorporated, the Governor shall appoint five qualified electors, inhabitants of the said District, Commissioners, to hold an election of the qualified electors residing within the limits of such Water District, and shall fix a day, hour and place at which said Commissioners shall first convene for the purpose; *Provided*, That no such election shall be held oftener than once in any period of three years.

SEC. 2. The Secretary of State shall cause a notice of the appointment of such Commissioners, and of the day, hour and place appointed for their meeting, to be certified to them severally under the seal of his office; and the said Commissioners shall assemble at the place and at the day and hour mentioned in such appointment, or as soon thereafter as may be, and appoint one of their number President, and one of their number Clerk of the Commission, and shall also by resolution



fix and appoint a place for their future meetings, and to which the returns of such election shall be transmitted.

SEC. 3. The majority of such Commission, at any time duly assembled, may exercise the powers of the said Commission, and a less number may adjourn from day to day, or for any longer period. Meetings of said Commission may be lawfully called by the President, or any two members thereof, and notice thereof may be sufficiently served by depositing the same in the post-office, properly addressed, forty-eight hours prior to the hour appointed for such meeting.

SEC. 4. As soon as may be after their appointment the said Commission shall fix the several places in each precinct contained within the said Water District (the limits whereof shall be the same as those of the precincts into which the several counties, wholly or in part, included within the limits of the said Water District, shall have been subdivided for the purpose of the general election held in such counties next prior thereto) at which the electors shall assemble for the purpose of said election, and fix the day of such election, and appoint three capable and discreet persons, electors of such precincts respectively, to act as judges of said election in the said precincts respectively, and shall forthwith and at least thirty days prior to the day appointed for such election, cause a notice of such election and that the purpose thereof will be to determine whether said Water District shall become incorporated, and of the several places in each precinct at which the electors shall assemble, to be published in at least one newspaper in each county, wholly or in part included within the limits of said Water District, wherein such newspaper is published, and in case in any such county there be no newspaper published, shall cause such notices to be conspicuously posted in at least three different places in that part of said county contained within the limits of said Water District.



SEC. 5. The Clerk of the Commission shall keep a fair record in a well bound book, by him to be provided for the purpose, of all the orders and proceedings of said Commission, and shall certify to each of the Judges of Election, appointed by the Commission in each precinct, the fact of their appointment.

SEC. 6. Within three days immediately preceding the day appointed for such election the County Clerk of each county, wholly or in part included within the said Water District, shall deliver to one of the Judges of such election, appointed pursuant to this Article, one of the ballot boxes provided by the county for the general election, and the Judges of such Election shall, within three days after the close of such election, return the same to such County Clerk.

SEC. 7. If any person appointed to act as Judge of such election in any precinct, shall fail to attend at the place appointed therefor by the hour appointed for the opening of the polls, or shall neglect or refuse to be sworn or affirmed, to act in such capacity, his place shall be filled by the votes of such qualified electors of the precinct as may then be present. And every person so elected to fill such vacancy or vacancies shall exercise the same powers as if appointed by the Commission.

SEC. 8. When three Judges so appointed shall be duly sworn they may appoint two persons, electors residing within the precinct, to act as Clerks of the election.

SEC. 9. Each of the Judges and Clerks of Election shall severally take an oath or affirmation in the same form as prescribed in the statute regulating general elections. And such elections shall, in each precinct, be proceeded with in the same manner in respect of the receipt of the ballots, the keeping of the poll-lists, the preservation of order, the challenge of voters, the trial of such challenge and all other matters of detail, as pre-

scribed in the statute regulating general elections; and the powers of the Judges shall be the same as prescribed for the Judges of such elections.

SEC. 10. At every such election the polls shall be opened at seven o'clock in the morning and continue open until seven o'clock in the evening of the same day. And proclamation of the opening of the polls and of the closing thereof shall be made in the same manner and at the same time as prescribed in the general law.

SEC. 11. As soon as the polls at such election in any precinct, shall have closed, the judges of the election shall proceed to count and canvass the votes in the same manner as prescribed in the law governing the general election; and after the votes shall have been read and counted the judges shall make a certificate under their hands, which shall be attested by the Clerks of the Election substantially in the form following, that is to say:

"At an election held at the \_\_\_\_\_ house of \_\_\_\_\_ in \_\_\_\_\_ Precinct or Ward, in the county of \_\_\_\_\_, and State of Colorado, on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18\_\_\_\_, upon the question whether Water District No. \_\_\_\_\_, in the State of Colorado, shall become incorporated, \_\_\_\_\_ votes were cast 'in favor of incorporation,' and \_\_\_\_\_ votes 'against incorporation.'

Certified by us this \_\_\_\_\_ day day of \_\_\_\_\_, A. D. 18\_\_\_\_\_.

Attest:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
*Judges of Election.*

\_\_\_\_\_  
\_\_\_\_\_  
*Clerks of Election."*

And the said certificate with one of the lists of voters kept by the Clerks of Election and one of the tally sheets shall then be enclosed, sealed up under cover, directed

to the Clerk of the Commission appointed to hold such election, and the package thus sealed shall be sent by registered letter, where practicable, otherwise, by one of the Judges or Clerks of Election, to be determined by lot if they cannot agree otherwise, within three days after the closing of the polls, to the Clerk of the Commission aforesaid. The ballots and the other poll-list and tally sheet shall, with the ballot-box, be returned to the office of the County Clerk of the county wherein such precinct is situate.

SEC. 12. At every such election the ballot shall be inscribed, "For incorporation," or "Against incorporation."

SEC. 13. On the tenth day after the election the Commission shall assemble at the place appointed for their meeting, as provided in the second section, and shall canvass the returns thereof and make an abstract thereof, setting down therein the number of votes for and against incorporation, cast in each precinct, which shall be entered of record in the Book of Records kept by the Clerk, in the form following as near as may be:

"On this ----- day of ----- A. D. 18 ---- the Commissioners appointed by the Governor of the State of Colorado to hold an election in Water District No. ---- of the State of Colorado, to determine the question whether such Water District shall become incorporated, assembled at -----, in the county of ----- in the said Water District, to canvass the votes cast at the election held for the purpose on the day of ----- A. D. 18 ----, and upon such canvass of the votes as returned to us by the Judges of Election in the several precincts, it appeared that in each of the precincts wherein an election was held the following number of votes were cast, that is to say: 'In precinct of ----- county, ----- votes for incorporation, and ----- votes against incorporation,'" and so following as to each precinct.

And thereupon having completed such canvass of the votes, and having ascertained the total number



of votes cast for and against the proposed incorporation, and ascertained the result, and made certificate thereof as aforesaid, the said Commission shall attest the same with their signatures in such record, and shall cause to be made and shall certify under their hands, a copy thereof, and transmit the same forthwith by mail to the Secretary of State. The original of the returns of the election received from the Judges of Election in each precinct shall be carefully preserved by the Clerk of the Commission, and upon the appointment and organization of the Board of Directors of the District (in case such election shall result in favor of incorporation) shall be by him delivered to the Clerk of such Board of Directors, together with the record of the proceedings of the Commission kept in pursuance hereof.

SEC. 14. If by such canvass of the votes cast at such election, it shall appear that the majority of electors voting thereat voted in favor of incorporation, the Governor shall, within ten days after the receipt of the certificate of the Commission as to the canvass of the election, and the result thereof, as hereby required, issue his proclamation, setting forth the result of such election and that thereby the inhabitants of the said Water District, naming the same, became and are a corporation pursuant to this act, and appointing and naming five qualified electors of the said Water District to be and serve as Directors for the said District until the next election to be had therein.

SEC. 15. The Secretary of State shall cause the said proclamation to be published in at least one newspaper in each county, wholly or in part included within the said Water District, and shall, under his seal of office, certify a copy thereof to the persons named as Directors of the said Water District.

SEC. 16. Each of the said Commissioners shall receive the sum of five dollars per day for each day during which he shall be employed in the discharge of the



duties of his office. And each of the Judges and Clerks of Election shall receive the same fees as allowed to the Judges and Clerks of the General Elections. Such compensation of the members of the Commission and of the Judges and Clerks of Election shall be ascertained and certified by the Commission and by them apportioned among the several counties wholly or in part included in the Water District, and upon their certificate thereof and their apportionment thereof, certified to the said several Boards of Commissioners, the same shall be paid according to such apportionment.

SEC. 17. Every such Water District incorporated in pursuance hereof shall be a body politic and corporate by the name of "Water District No. -----, in the State of Colorado," and may sue and be sued, plead and be impleaded in all Courts and places whatsoever, and may make and use a common seal and alter the same at pleasure.

SEC. 18. The Board of Directors of every such Water District shall assemble at the place and on the day and hour fixed in the proclamation of the Governor, or as soon thereafter as may be, and shall organize by appointing one of their number to be President of the District, and one of their number to be Treasurer of the District, and one of their number or some other qualified elector of said Water District to be Clerk of the District; and as soon as may be thereafter shall adopt by-laws prescribing the places and times, not oftener than once in each calendar month, when and where their stated meetings shall be held, the manner of calling special meetings, and the manner and time of serving notices thereof.

SEC. 19. On the third Monday in November next succeeding the organization of such district, an election shall be held for the choice of a Board of five Directors to succeed those first appointed by the Governor as hereinabove provided. Each of the Directors so chosen

shall be a qualified elector residing within the limits of the said Water District.

SEC. 20. On the third Monday after such election the said Board of Directors so elected shall assemble at the place theretofore appointed for the meetings of the Board, and having severally taken and subscribed the oath of office prescribed by the Constitution, and having transmitted the same to the Secretary of State to be filed in his office, shall proceed to determine by lot the duration of the term of office of each of them, so that the term of office of one of said Board of Directors shall expire in each year following. And on the third Monday of November of each year thereafter an election shall be held in all of the precincts throughout such district to fill such vacancy, and any other vacancy then existing in such Board.

SEC. 21. Every such Board of Directors shall have power:

*First*—To adopt by-laws, not inconsistent with this Act or any other law of the State of Colorado, for enforcing the economical use of water and preventing waste thereof.

*Second*—To erect, maintain and operate telephone lines or other means of speedy communication within such Water District for promoting speed and facility in communication between those controlling the waters of such District and those entitled to the enjoyment thereof, and to demand and receive reasonable rates and tolls for the use of such telephone lines or other means of communication; *Provided, howsoever*, That no compensation shall be exacted for the use thereof by the State Engineer, Superintendent of Irrigation, the Water Commissioner of the District or any assistants of said officers, or either of them, for transmitting any message relating to their official duties.

*Third*—To construct reservoirs for storing unappropriated water of the natural streams of such Water District at other times than during the seasons of irrigation, or when the same shall not be needed for direct irrigation, for use in such Water Districts during the season of irrigation.

*Fourth*—To construct works for draining marshy or saturated lands and collecting waters therefrom and returning the same to the natural streams.

*Fifth*—To construct works for improving the natural streams within such Water District, confining the same to their channels and preventing the waste of the waters thereof.

*Sixth*—To lease, purchase or take, in pursuance of the Statutes regulating the right of eminent domain, the lands and other property necessary for the site of such reservoirs or for the line and stations of such telephone lines or other means of speedy communication, and to sell and dispose of any such properties, or any materials, tools or supplies when the same shall be no longer needed.

*Seventh*—To prescribe, enforce and collect penalties, not exceeding a fine of three hundred dollars for any one offense, from all persons who shall violate any by-law made by such Board of Directors for prohibiting extravagance in the use of and waste of water.

*Eighth*—To employ and discharge such servants as may be necessary for the purposes aforesaid, and such policemen as may be necessary for enforcing their by-laws, to prescribe their duties and powers and to fix their compensation.

*Ninth*—To levy and collect in each year, upon all real and personal property within such Water District, a tax not exceeding ----- mills upon each dollar of the assessed valuation thereof, for use in the purchase of the material and the employment of the servants and



policemen necessary for carrying out the purposes of said corporation.

*Tenth*—To prescribe reasonable and necessary by-laws, not inconsistent with this Act or the laws of the State, for carrying into effect the powers aforesaid and regulating the exercise thereof, and for prescribing the time, manner and places of the election therein, and the rate and manner of assessment and collection of the taxes to be levied in pursuance hereof. No such corporation shall borrow money for any purpose whatsoever; nor save for necessary expenses of elections, the compensation of the Directors and other officers thereof, as herein prescribed, and for the reasonable hire of necessary servants and clerks, and of the Water Police employed for enforcing its regulations, contract any debt whatsoever.

SEC. 22. Every such Board of Directors shall have power at any stated meeting, by a majority of their number then present, to fill vacancies in such Board of Directors occasioned by death, resignation or permanent removal out of the District. Every person so appointed to fill such vacancy shall hold his office only until the next election of Directors in such Water District and until the election and qualification of a successor to the person in whose stead he was appointed.

SEC. 23. Any Justice of the Peace within the said Water District shall have power to entertain complaints for the violation of any by-law of such Water District, and to give judgment for the penalty prescribed by such by-law, to fix the amount of such penalty where the same be discretionary, and to issue execution for the collection thereof.

SEC. 24. Every such Board of Directors may prescribe that any fine imposed for the violation of any by-law thereof, may be enforced by imprisonment of the offender, in the county jail, until payment thereof or until he shall be otherwise discharged, according to law;

*Provided, however,* That no by-law imposing any fine or penalty shall be of effect until ten days after the same be published in some public newspaper within such Water District.

SEC. 25. Any by-law, order or other proceedings shall be sufficiently proven by the certificate of the Clerk of such Board, that the same is truly copied from the record thereof in his office; and a book purporting to be published by authority of such Board of Directors, and purporting to contain the by-laws or other orders and proceedings of such Board, shall be deemed and taken as evidence in all courts and places.

SEC. 26. Upon petition of not less than thirty qualified electors residing within the limits of each Water District in any Water Division, the Governor shall appoint a Commission consisting of one qualified elector from each of said Water Districts to hold an election of the qualified electors within the limits of such Water Division upon the question whether such Water Division shall become incorporated, and the Commission so appointed shall proceed in all things as hereinbefore prescribed touching the incorporation of the Water Districts; and all the foregoing regulations touching the election and manner thereof, the power of the Judges, canvass of the ballots and other proceedings touching said election, the returns thereof and the proclamation of the result, shall control in such election; and the compensation of the Commissioners appointed to hold said election, and the Judges and Clerks thereof, shall be the same, and shall be paid in the same manner as herinbefore provided touching the Water Districts.

SEC. 27. Every such Water Division becoming incorporated pursuant to the foregoing section, shall be governed by a Board of Directors, and the same officers, of the same number and titles, as the Water Districts, who shall be first appointed and afterwards elected, and vacancies in the number of which Directors shall be

filled, in the same manner as hereinbefore provided touching the Water Districts; said Board of Directors shall have the same powers as herein prescribed for the Board of Directors of Water Districts, and the by-laws thereof may be enforced in the same manner. Wherever in any case there are persons or corporations diverting and using in the lower parts of such Water Division, or at a great distance from the source of supply, waters of the natural streams, or any such streams thereof, and who are entitled thereto by appropriations prior in date to the appropriators of waters for the same or inferior purpose in the upper parts of the streams, or many such appropriators, and by suffering the water to flow to such lower appropriators, great waste is occasioned, such Water Division shall have power to agree with the persons and corporations, proprietors of works diverting such waters in the lower parts of the Division, and the several persons entitled to the use of such waters, that such persons and corporations yield up, assign and transfer to such Water Division their priorities of date, and suffer water to the amount which the proprietors of such ditches, conduits or other works in the lower part of the Division are entitled to divert, convey or store, to be diverted, conveyed, stored and used in the upper parts of such Water Division nearer the sources of supply, as the Board of Directors of such Water Division may from time to time direct, and that the persons and corporations theretofore diverting, carrying or storing such waters in the lower parts of such Water Division shall be entitled to divert, carry and store the same amount of waters as of a junior priority.

SEC. 28. Every such Water Division may, for effecting such purchase, or to enable it to carry out such agreement, borrow money and issue its bonds, payable at such time as the Board of Directors may by resolution prescribe, and bearing interest at not exceeding six per cent. per annum, payable semi-annually at such



place as may be provided in such bonds; *Provided, however,* That no such loan shall be contracted save by by-law irrevocable until the indebtedness shall have been fully paid or discharged, specifying the purposes to which each particular fund so to be borrowed shall be applied, and providing for the levy of a tax not exceeding twelve mills on each dollar of valuation of the taxable property within such Water Division sufficient to pay the annual interest and extinguish the principal of said loan within the period for which said loan is contracted, which shall not in any case exceed fifteen years; and such tax when collected shall be applied only to the purposes in such by-law prescribed until the indebtedness be fully discharged; and no such indebtedness shall be contracted exceeding the rate specified in the Sixth Section of the Eleventh Article of the Constitution of this State; *Provided, however,* That no such agreement shall be entered into until at some election of a Director in such Water Division, or an election called for the purpose by the Board of Directors of such Water Division, two-thirds of the electors of such Water Division who have in the year preceeding paid a property tax in some one of the counties of such Water Division, shall vote in favor thereof.

SEC. 29. The Board of Directors of such Water Division may enact reasonable by-laws not in conflict with this act, or the laws of the State regulating the manner of submitting the question of such purchase to the electors of such Water Division, and for ascertaining and certifying the result; every such proposition for such agreement touching the purchase of the priority of right of any appropriator shall specify and set down the maximum price to be paid for each ditch, conduit, reservoir or other works, the priority in respect whereof is proposed to be obtained, whether a loan is proposed to be made therefor, or the amount raised by taxation, the period of such loan, if any, and the rate of interest to be paid thereon.

SEC. 30. If in any case by reason of the absence, nonage or other disqualification of the proprietors of any such works, or the persons entitled to the use and enjoyment of the waters diverted thereby in the lower parts of such Water Division, or the refusal of them or any of them to agree in that behalf, the Directors of such Water Division be not able to agree with them touching the compensation to be paid in that behalf, they may cause the same to be ascertained in the manner prescribed by the laws then in force regulating the exercise of the power of eminent domain.

SEC. 31. Whenever the Board of Directors of any Water Division shall propose to agree with the proprietors of any ditch, conduit or other works in manner as hereinbefore provided, they shall prepare and cause to be filed in the office of the State Engineer a certificate of their intentions in that behalf, and setting forth the name of the ditch, conduit or other works, the priority of right in respect whereof it is proposed to purchase, and in case such purchase be consummated, either by mutual agreement or condemnation in pursuance hereof, the proprietors of such ditch, conduit or other works shall be entitled to divert, carry or store and use, or deliver to others for use, the same amount of water as theretofore, but as of the date of the filing of such certificate by the Board of Directors of such Water Division; and all appropriations made in the mean time shall be subject to the rights of the proprietors of such ditches, conduits or other works, provided such purchase be consummated within two years after the filing of such certificate.

SEC. 32. The Board of Directors of any such Water Division incorporated in pursuance hereof having purchased or taken in pursuance of this Article the right of any prior appropriator to divert, carry and use any waters as of prior date, shall thereafter at all times have control of the waters so obtained and the right formerly enjoyed

by such prior appropriator in respect thereof, and shall from time to time distribute and dispose thereof to the different works in the upper parts of such Water Division nearer to the sources of supply as may seem to the Board of Directors of such Water Division requisite, fitting or most to the advantage of the inhabitants of the Water Division, but they shall not lease the same out or sell or dispose of the rights so acquired in respect of such waters.

SEC. 33. Whenever thirty qualified voters residing within the limits of any Water District shall request the Board of Directors of such Water District to submit to the qualified voters thereof, the question of dissolving and disincorporating such Water District, the Board of Directors shall cause such question to be submitted to the qualified electors of such District at the election next held therein for choosing a Director, or they may call a special election for the purpose. At such election the votes shall be received, returned and canvassed in the manner prescribed by the by-laws of such Water District for other elections, and if the majority be in favor of disincorporation the Board of Directors shall make a certificate of the result of such election and cause the same to be recorded in the records of such Water District and certify a copy thereof to the Secretary of State and to the State Engineer, and such Water District shall thereupon become forthwith disincorporated, and all the records of such Water District shall be forthwith filed by the Clerk of the Board of Directors thereof in the office of the State Engineer. No election upon the question of disincorporation shall be had oftener than once in three years.

SEC. 34. Upon petition of not less than thirty of the qualified electors in each Water District of any Water Division incorporated in pursuance hereof, praying the Board of Directors of such Water Division to submit the question to the qualified electors, such Water Divis-



ion may become disincorporated in the same manner heretofore prescribed touching the Water Districts. Such election shall not be called or held oftener than once in three years.

SEC. 35. In case of such disincorporation of any Water District or Water Division the Board of Directors thereof then incumbent shall continue in office so long as may be necessary for collecting and disposing of the properties pertaining to such corporation and discharging the debts thereof, and no longer, and shall be trustees of such corporation holding over, solely for the purpose aforesaid; *Provided, however,* That no such dissolution of the corporation shall in any manner discharge or impair the bonded debt, or any outstanding obligation or liability of such corporation, nor exonerate any properties which may be situate within the limits of such Water District or Water Division as the same were at the date of issuing of such bonds, or incurring such obligation or liability, from taxation for raising moneys for discharging the principal and interest of such bonded debt, or other obligation or liability; and notwithstanding any such dissolution the Board of Directors of such Water Division or Water District holding office at the time of such dissolution, shall continue in office for the purpose of annually levying the tax for discharging such indebtedness or the interest thereon, and may from time to time fill vacancies in such Board, and appoint the officers necessary for assessing, levying and collecting such tax and applying the proceeds to such payment.

SEC. 36. All proceeds of the annual tax levied in any such Water District or Water Division, or moneys otherwise received into the treasury of such corporation and not necessary for discharging the indebtedness of such Water District or Water Division then due or presently to mature, shall be let out by the Board of Directors of such corporation upon first mortgage of lands situate within such Water District or Water Division

for such rate of interest as can be procured therefor, and for such time as to the Board of Directors shall seem fit. No such loan shall be made to any member of such Board of Directors, or to any one within one year theretofore a member of such Board of Directors.

SEC. 37. The Directors of each Water District and Water Division shall severally be paid from the treasury thereof, five dollars for each day's attendance on the meetings of the Board, and the same *per diem* whenever by resolution of the Board entered upon the records thereof, they shall be employed in discharging any official duty, with the same mileage for all journeys made in attending such meetings, or any official duty, as allowed to the Sheriffs in counties of the second class; the Treasurer and clerks shall receive such additional compensation for their services as may be provided by general by-law; the compensation of the Water Police and other officers and servants of the Board shall be as the Board of Directors may prescribe.

SEC. 38. No money shall be drawn from the treasury of any such corporation, save pursuant to the order of the Board of Directors duly entered of record, and upon warrant signed by the President and countersigned by the Secretary of the District. The Treasurer of every such District, before entering upon the duties of his office, shall be bound in such sum as may be prescribed by the Board of Directors, not less than five thousand dollars, with not less than three sureties and conditioned for the faithful discharge of the duties of his office, and that he will account for and deliver to his successor in office all moneys, bonds, bills, books of account and other properties and things whatsoever that may come to his hands by virtue of his office. Any member of the Board of Directors, or any surety in the bond of such Treasurer, shall be entitled at all times to examine the books of account, vouchers, moneys on hand, evidences of debt, and other documents whatsoever in the office of the

Treasurer; and the Board of Directors may at any time remove from his office as Treasurer, a Director appointed to that position and appoint another in his stead.

SEC. 39. If the treasurer of any such corporation shall in any manner apply to his own use any of the moneys of the District, or lend or pay the same out otherwise than hereinbefore provided, he shall be deemed guilty of felony and may be punished by fine not exceeding five thousand dollars, or imprisoned in the penitentiary not exceeding five years, or by both such fine and imprisonment.

SEC. 40. The properties of the several inhabitants of such Water Divisions and Water Districts becoming incorporated in pursuance hereof, shall not be liable to be taken in execution for the debts of such corporations.

SEC. 41. This Article may be amended or repealed at the pleasure of the General Assembly.

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## ARTICLE XVI.

OF PROCEEDINGS FOR THE PUNISHMENT OF OFFENSES PRESCRIBED  
BY THIS ACT.

SECTION 1. In all cases declared misdemeanors by this act, where the punishment does not exceed a fine of three hundred dollars, or imprisonment in the county jail, the same may be prosecuted before any Justice of the Peace of the county wherein the offense was committed.

SEC. 2. Any Justice of the Peace of such county, upon complaint being made before him under oath that any person hath committed any violation of this Act, may issue his warrant directed to the Sheriff or any Constable of such county, commanding such officer to arrest the person charged and bring him forthwith before such Justice of the Peace or some other Justice of the Peace to be dealt with according to law, and such officer shall



have the same power touching the arrest and detention of such persons as in other cases. A special Constable may be appointed by any Justice of the Peace for the execution of any such warrant.

SEC. 3. The Justice of the Peace before whom such person or persons may be brought for trial shall hear and determine the matter and, if the accused be found guilty, assess the fine and term of imprisonment, if imprisonment be a portion of the punishment for such offense, or require such person to give bail to answer to an indictment where it shall appear that such person in the act complained of was guilty of an offense exceeding the jurisdiction of said justice; *Provided, however,* That in the prosecution of offenses punishable by Justices of the Peace, the accused shall be entitled to trial by jury, in any such case to be summoned as in complaints before a Justice of the Peace for the offense of assault and battery.

SEC. 4. The accused person shall be entitled to appeal from the judgment of the Justice of the Peace as provided in other criminal prosecutions.

SEC. 5. All fines collected for violations of this Act shall be paid into the general fund of the county wherein the offense was committed, or where the Water District wherein the offense was committed hath become incorporated, then to the Treasurer of such Water District, to be disposed of in the discretion of the Board of Directors of such District; or, if said Water District be not incorporated, and the Water Division is incorporated, then to the Treasurer of said Water Division, subject to like disposition.

*And be it further enacted,* That all acts and parts of acts in conflict with the foregoing sixteen (16) Chapters or any thereof, and particularly the following acts and parts of acts, to wit: "Chapter forty-five (45) of the Revised Statutes of the State of Colorado (1868);" "An act

defining rights and liabilities of miners and millmen in certain cases," approved February 11, 1870; "An act concerning irrigation in El Paso county," approved February 5, 1872; "An act to provide for the drainage of mines," approved January 31, 1872; "An act to amend Chapter forty-five (45) of the Revised Statutes of Colorado," approved February 9, 1872; "An act to prevent the waste of water during the irrigating season," approved February 11, 1876; "An act to prevent the use of water in meadow lands in the county of Huerfano, in certain months," approved February 10, 1876; "An act to regulate the use of water for irrigation, and providing for settling the priority of right thereto, and for payment of the expenses thereof, and for payment of all costs and expenses incident to said regulation of use," approved February 19, 1879; "An act to make further provisions for settling the priority of rights to the use of water for irrigation, in the District and Supreme Courts, and for making record of such priorities, and for payment of costs and expenses incident thereto," approved February 23, 1881; "An act to provide for the extension of the right of way for ditches, canals and feeder (feeders) of reservoirs in certain cases, and requiring registration of all such hereafter made or enlarged," approved February 11, 1881; "An act to punish for breaking or disturbing the gates or banks of ditches, canals, reservoirs and feeders thereof," approved February 12, 1881; "An act relating to irrigating ditches and manner of their construction," approved February 12, 1881; "An act to provide for headgates for irrigating ditches," approved February 11, 1881; "An act to amend an act, entitled, 'an act to regulate the use of water for irrigation, and providing for settling the priority of rights thereto, and for payment of the expenses thereof, and for payment of all costs and expenses incident to said regulations of use,' approved February 19, 1879," approved April 9, 1885; "An act to repeal section five (5), of an act entitled, 'an act to

provide for the appointment of a State Engineer, and to define his duties and regulate his pay, and for the appointment of his assistants, and the establishment of water divisions,' " approved March 5, 1881; the same being section 1806, of the General Statutes, 1883; and also to amend section fifteen (15), of an act, entitled, "An act to regulate the use of water for irrigation, and providing for settling the priority of right thereto, and for payment of the expenses thereof, and for the payment of all costs and expenses incident to said regulation of use," approved February 19, 1879, the same being section 1751 of the General Statutes of 1883; and to establish the San Juan Water Division; also, to create Water Districts in established Water Divisions; also, to provide for utilizing testimony heretofore offered as evidence in the adjudication of water rights," approved April 1, 1885; "An act concerning irrigation, and the purification of the waters of the streams, lakes and reservoirs of the State of Colorado, and to provide for the expense thereof," approved April 7, 1885; "An act to regulate the mode of fixing the rates of compensation by Boards of County Commissioners, for water furnished and delivered for irrigation and other lawful purposes, from ditches, canals, conduits and reservoirs; and to repeal laws inconsistent therewith, and punish offenses contrary thereto," approved April 4, 1887; "An act providing for the appointment of Superintendents of Irrigation for the Water Divisions of this State; fixing their compensation and providing for the payment thereof; prescribing their duties, and requiring a bond for the faithful performance of such; requiring Clerks of District Courts to furnish such Superintendents with certain certified decrees, and providing for the payment of such Clerk's fees," approved April 4, 1887; An act, entitled, "An act concerning irrigation," approved April 17, 1889; "An act to amend Section forty-two (16), Chapter LVII., of the General Statutes of the State of Colo-



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perpendicular, inside measurement, except boxes delivering less than twelve inches, which may be square, with or without slides; all slides for the same shall move horizontally and not otherwise; and said box put into the banks of ditch shall have a descending grade from the water in ditch of not less than one-eighth of an inch to the foot," are hereby repealed, and all proceedings now in progress under any of the said statutes or amendments thereof for establishing the rights or priorities of right of any person or corporation to water are hereby abated; *Provided, however,* That save as hereinbefore especially provided such repeal shall not annul or impair the effect of any adjudication heretofore had under any of the said enactments for establishing the rights, or priorities of right of any person or persons in water nor shall such repeal be construed to take away any right acquired under any of the said enactments.





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## A BILL

FOR

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF THE STATE OF COLORADO AMENDMENTS TO THE SIXTEENTH ARTICLE OF THE CONSTITUTION.

*Be it enacted by the General Assembly of the State of Colorado:*

SECTION 1. There shall be submitted to the qualified electors of the State of Colorado at the next general election for members of the General Assembly, for their approval or rejection, the following amendment to the Constitution of the State, which, if approved by a majority of those voting thereon, shall become part of the Constitution, that is to say, "Section six of Article sixteen of the Constitution of the State of Colorado shall be amended to read as follows: 'Section 6. The right to divert the unappropriated waters of any natural stream to beneficial use shall never be denied. Priority of appropriation shall give the better right. The legislature shall enact laws for governing the distribution of water and for preventing extravagance and waste in the use thereof.'"

SEC. 2. Each elector voting at said election and desirous of voting for or against the proposed amendment, shall deposit in the ballot-box a ticket, whereon shall be printed or written the words, "For the amendment," or the words, "Against the amendment."

SEC. 3. The votes cast for the adoption or rejection of said amendment shall be canvassed, and the result determined in the manner provided by the laws for the canvass of votes for Representatives in Congress.



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# MINORITY REPORT.

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To the HON. JAMES RICE,

*Secretary of State.*

SIR—Being convinced—

*First*—That right and justice and the spirit of the Constitution imperatively demand that the sale or lease of the waters of the streams, or any traffic therein, or any charge therefor, whatsoever, save the lawful charge for the carriage thereof, should be prohibited by law.

*Second*—That in order to an effectual judicial determination of the rights of the several persons entitled to divert, convey, store or use the waters of the streams, and in order to a satisfactory administration of such waters by the officers of the State, the law should clearly distinguish between a right of appropriation, a right of carriage and a right to the use of water.

*Third*—That water for “domestic purposes,” as the phrase is used in the Constitution, should not be interpreted or defined so as to include water for irrigation to any extent whatever.

*Fourth*—That water applied to the irrigation of land or to the operation of any mine or of any mill, smelter, manufactory or other works, should be made an appurtenance of the land, mine, mill, smelter, manufactory or works to the irrigation or operation of which such water is applied.

And having presented these views without their having received favor in the eyes of a majority of the Commission, it devolves upon me to present to you, for submission to the next General Assembly, a report relative to the above matters, and other matters of minor importance wherein I differ with a majority of the Commission. This I do in the form of a bill, in which such matters of difference are set forth in full, and those matters upon which there is no difference of opinion are set forth by reference.

I am, sir, respectfully,

Your obedient servant,

J. S. GREENE.



# Minority Report, in the Form of a Bill.

## ARTICLE I.

### OF THE APPROPRIATION, CARRIAGE AND EMPLOYMENT OF WATER.

SECTION 1. The lawful diversion, conveyance, retention or storage of the water of natural streams or the water flowing in well defined subterranean channels, for application to beneficial uses within the State, shall be deemed and taken to be a *carriage* of water. Any person, association or corporation effecting such a carriage of water shall be deemed a *carrier* of water and the right to divert, convey, retain or store such water, for application to a beneficial use within the State, shall be taken and deemed to be a *right of carriage* of water.

SEC. 2. Any person, association or corporation effecting such a carriage of water by means of any ditch, conduit, reservoir or other works shall, when such water is conveyed or stored in whole or in part for hire, or to be applied to a beneficial use in whole or in part by others, be deemed in relation to such water and works to be a *public carrier* of water.

SEC. 3. The lawful application to a beneficial use of any of the water diverted, conveyed, retained or stored under any right of carriage of water shall be deemed and be taken to be an *employment* of water. Any person, association or corporation effecting such an employment of water shall be deemed a *consumer*, *employer* or *user* of water as the words "user," "consumer" and "employer" are used in this act.

SEC. 4. The definitions given in this act of the words "carriage" and "employment" shall not be so taken or construed as to limit or affect the judicial definition of a constitutional "appropriation of water" which includes both the carriage and employment of water.



SEC. 5. Every carrier of water shall be entitled to divert, convey or store water as of and from the date of carriage thereof, determined as prescribed in this act, subject, however, to the rights of those entitled to the employment of the water so diverted, conveyed or stored.

SEC. 6. The extent to which any person may divert, convey or store the water of any Water Division of the State, sought to be diverted, conveyed or stored under a right of carriage of water by him enjoyed, shall not exceed the extent to which such water may be needed for the uses to which the same shall have been, or shall be, applied within a reasonable time from the date of carriage thereof, or thereafter and before the initiation of a right of carriage of such water by some other person.

SEC. 7. Any person having acquired a right of carriage of water to the extent prescribed in the preceding section, shall be entitled to thereafter annually divert, convey or store such water so long as the same is with reasonable continuity applied to beneficial uses. The neglect or failure, however, by any person so entitled, to divert, convey or store any part of such water for four years consecutively shall be deemed an abandonment of the right of carriage of such part of such water, except where such person is prevented from effecting the carriage thereof by overpowering causes, or such water is not needed by reason of excessive or unusual rain-fall.

SEC. 8. Priority of date of employment shall give the better right to the use of water among the consumers of water diverted, conveyed or stored under a right of carriage of one date, saving the rights of the consumers of such water for any preferred use; *Provided, however,* That in the distribution of the water diverted, conveyed or stored under a right of carriage of one date, those consumers enjoying the earliest dates of employment of such water, to the number whose needs, for the uses to which such water was applied in effecting an employment thereof, may with reasonable efficiency

and sufficiency be supplied by the water customarily conveyed or stored under such right of carriage, shall, in times of scarcity, suffer a proportional diminution of the water to the use whereof they are entitled.

SEC. 9. The consumers of the water of any Water Division, conveyed or stored under a right of carriage of one date shall, as against the consumers of such water conveyed or stored under a right of carriage of a different date, be entitled to the enjoyment of such water in accordance with the date of carriage of the water by them employed, and without reference to the several dates of employment of water enjoyed by such several consumers.

SEC. 10. The extent to which the water, conveyed or stored under any right of carriage of water, may be used under any right of employment thereof shall not exceed the extent to which such water may be needed for the uses to which the same shall have been, or shall be applied within a reasonable time from the date of employment of such water, or thereafter and before the initiation of a right of employment of such water by some other person.

SEC. 11. Any person who shall directly divert and convey the water of any natural stream or the water flowing in any well defined subterranean channel in whole or in part for the irrigation of his own lands or the operation of his own mine or of his own mill, manufactory or other works of like character, shall be entitled to the same date of employment of water for such purposes as the date of carriage of such water; *Provided*, Such person shall apply such water to the irrigation of such lands or the operation of such mine, mill, manufactory or other works within a reasonable time from the date of carriage of such water.

SEC. 12. If any person shall make application in writing to any public carrier of water lawfully divert-

ing, conveying or storing, or entitled to divert, convey or store, any unemployed water, setting forth the extent to which he desires to apply to a beneficial use or beneficial uses such unemployed water, and the lands, or the mine mill, manufactory or other works to the irrigation or operation of which he desires to apply such water, and shall accompany such application with a tender of the lawful or reasonable rates which such carrier is entitled to charge for the carriage of such water, such person shall be entitled to the use of such water, and to a reasonable time in which to construct necessary laterals, sub-laterals or other works and effect an employment of such water, and the date of employment of such water may be taken as the date when such application and tender were made to such carrier.

SEC. 13. Any consumer of water who shall for three years consecutively fail to apply any part of such waters to a beneficial use, shall be deemed to have abandoned his right to the employment of such part of such waters; *Provided, however,* That the failure of any consumer of water to apply any part of the water to the use whereof he is entitled to the irrigation of his lands in any season when, by reason of unusual or excessive rain-fall, such irrigation is unnecessary, or when by reason of injury or disability from sickness, or that said person is prevented from the cultivation of his lands or the use of such water, by imprisonment, or by any prohibitory process of the law, or is kept out of his lands or the works or place in respect whereof such waters have theretofore been used, the failure or omission of such person to apply such waters to a beneficial use shall not be deemed an abandonment.

SEC. 14. In the event that any consumer of the water diverted, conveyed or stored under any right of carriage of water shall abandon any part of the water to the use whereof he is entitled, or his right to the employment of any part of such water, the right of employment



of the water so abandoned may be initiated and acquired by any person proceeding as prescribed in section 12 of this Article.

SEC. 15. Notwithstanding anything prescribed in the foregoing sections of this Article, the enjoyment of every right of carriage of the water of any Water Division shall be subject to the rights of those entitled, either as carrier or consumer, to the enjoyment of a prior appropriation of such water, and to the rights of those entitled to effect the appropriation of such water for any preferred use. And the date of appropriation of water shall be the same as the date of carriage thereof.

## ADDENDUM.

Insert, after the word *rain-fall* in the 9th line of Section 13, the words "or because of the saturation of such lands by waters seeping or wasting from any ditch, conduit, reservoir, or other works for the conveyance or storage of water."

works commenced after the passage of this act, shall be deemed and taken to be the day of commencement of such works or of such enlargement; *Provided*, That within ninety days after the commencement or such works or such enlargement, the person effecting or desiring to effect the carriage of water by means thereof shall cause maps and statements, such as required by the twenty-fourth section of this article, to be filed as therein required; and the commencement of any such works or of such enlargement shall be taken to be the date of the actual commencement of the construction of such works or enlargement upon the ground if such construction is commenced before the commencement of the survey therefor, otherwise, the commencement of such survey shall be taken to be the date of commence-



ment of such works or such enlargement. If such maps and statements be not filed as required in the twenty-fourth section of this article within ninety days after the commencement of such works or such enlargement, then in that case the date of carriage of such water by means of such works or such enlargement, shall be deemed and taken as of the date at which such a map and statement be filed in the office of the State Engineer ; *Provided*, That then or within a reasonable time thereafter, duplicates of such map and statement be filed in the offices of the county clerks of the several counties wherein the said works are proposed to be constructed.

SEC. 20. Wherever any person, subsequent to the twelfth day of June, A. D. 1881, and before the nineteenth day of July, A. D. 1887, commenced the construction of any ditch, conduit, reservoir or other works or any enlargement of such works, for the conveyance or storage of water for irrigation merely, of a carrying capacity of more than one cubic foot per second of time, and proceeded with reasonable diligence in such construction or the work of such enlargement, his date of carriage of such water shall be deemed to be the date of commencement of such works or such enlargement; *Provided*, That such person hath heretofore filed, or shall file, within ninety days after the passage of this act, and cause to be recorded in the office of the County Clerk of the county or counties in which such ditch, canal or feeder is situate; and if situate in any Water District, then in the office of the County Clerk of each county into which such Water District may extend, a sworn statement in writing showing the name of such ditch, canal or conduit, or of such reservoir; the point where the head-gate thereof is situated (if a new construction), the width and depth of such ditch, canal or feeder, the carrying capacity thereof in cubic feet per second, a description of the line thereof, the time when the work was commenced, the name of the owner or owners thereof, and a map.

showing the route of such ditch or conduit, the legal subdivisions of the land, with proper corners and distances, if on surveyed lands, and, in case of an enlargement, the depth, width and carrying capacity of the ditch enlarged, with the width and depth thereof as enlarged, the increased carrying capacity of the same thereby occasioned, and the time when such enlargement was commenced.

SEC. 21. Whenever any person subsequent to the nineteenth day of July, A. D. 1887, and before the date of the passage of this act, commenced the construction of any ditch, conduit, reservoir or other works for the conveyance or storage of water for irrigation solely, and of a carrying capacity greater than one cubic foot per second of time, the date of carriage of water by means of such works shall be deemed and taken to be the date of the commencement of such works; or in case of an enlargement thereof, as the date of the commencement of such enlargement; *Provided*, That maps and statements, showing with reference to such ditch, conduit, reservoir or other works or such enlargement thereof, the point of location of the head-gate of such ditch, the route of such ditch or conduit, and the high-water line of such reservoir, the route of any feeders thereto and ditches and canals from such reservoir, the legal subdivisions of the lands upon which such structures were built, if on surveyed lands, the names of the owners of such lands, so far as of record in the office of the County Clerk of the county wherein such works were situate, such courses, distances and corners by reference to legal subdivisions, or to natural objects if on unsurveyed lands, as may clearly designate the location of such structures, showing also by such statements the point of location of the head-gate, the depth, width and grade of such ditch, canal or feeder, the carrying capacity thereof in cubic feet per second of time and the capacity of such reservoir

in cubic feet when filled to high-water mark, the time of commencement of work on such structures and increased capacity arising from such enlargement, as required, by the act of the General Assembly of this State, approved April 20, A. D. 1887, were filed with the State Engineer and the County Clerk and Recorder of the county wherein the head of such works was situate, within ninety days from the time of commencement of such work or such enlargement; otherwise such date of carriage shall be taken as of and from the time of filing such maps and statements.

SEC. 22. Wherever any person shall heretofore have constructed any ditch, conduit, reservoir or other works carrying less than one cubic foot of water per second of time, or any such works for carrying water not solely for the purpose of irrigation, such person shall be taken and deemed to be entitled to the carriage of such water, as of and from the commencement of such works, which shall be deemed the date of carriage of such water; *Provided*, Such water was, within a reasonable time, and thereafter with reasonable continuity, applied to beneficial uses, and provided that maps and statements, such as required by the twenty-fourth section of this article, be filed as therein required, within ninety days from the passage of this act.

SEC. 23. Any person using the water of any natural stream for the irrigation of any land, by the natural overflow or other natural operation of such water, shall in case the deepening or changing of the channel of such stream, or the diminishing of the supply of water therein from any cause, prevents such irrigation therefrom in as ample a manner as formerly, be entitled, when proceeding thereto lawfully, to construct a dam or other works in such stream for raising the water thereof, or to divert, convey or store the water of such stream by means of a ditch or other works, and to apply the same to the irrigation of such lands. Such person shall



be entitled to divert, convey or store and apply so much of the water of such stream as shall with the natural overflow or operation of the water of such stream which may still remain, be sufficient to irrigate such land as fully and completely as before such diminished overflow or operation took place, and shall be entitled to the same date of employment and the same date of carriage of water as though such carriage of water and the application hereof had been made by means of such works at the time such lands were first irrigated by such natural overflow or operation of such waters; *Provided*, That such lands shall have been, with reasonable continuity, utilized as meadow lands or for agricultural purposes; *And provided further*, That such diversion and application of water shall have been, or shall be, made within a reasonable time after such diminution of the overflow or the operation of the water of such stream.

Sections 24 and 25 are the same as sections 18 and 19, of Article IV. of Majority Report.

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## ARTICLE II.

OF THE PURPOSES AND USES TO WHICH THE WATERS OF NATURAL STREAMS MAY BE APPLIED.

SECTION 1. The waters of natural streams, as the phrase "Natural Streams" is used in this act, shall be construed to include the waters naturally flowing in any surface channel; the waters of any spring, lake, pond, marsh or bog naturally discharging into such a channel; the waters escaping from works for the conveyance or storage thereof and naturally discharging into such a channel, and the waters extending under such a channel or beyond the sides thereof and which, if withdrawn, would be replaced by waters flowing in such a channel.

SEC. 2. The beneficial use to which water is applied in effecting an appropriation thereof shall determine for



what purpose, whether domestic, agricultural or otherwise, such appropriation is made.

SEC. 3. Water for domestic purposes, as the phrase "Domestic Purposes" is used in this act, shall be construed to include, among other uses of water not inconsistent with the provisions of section four of this Article, water for the drinking, cooking, cleansing and sanitary purposes of the household and for the maintenance of the domestic animals kept with and for the use of the household.

SEC. 4. Water for agricultural purposes, as the phrase "Agricultural Purposes" is used in this act, shall be construed to include, among other uses, every beneficial use to which water may be applied in the germination, growth, maintenance or culture of plants.

SEC. 5. Any water lawfully applied to the irrigation of land shall be taken and deemed an appurtenance of such land. Any such water may be used for the raising and maintenance of animals upon such land, for the domestic uses of the people living or occupied upon such land and the mechanical uses pertaining to the cultivation of such land.

SEC. 6. Any water lawfully applied to the operation of any mine or of any mill, smelter, manufactory or other permanent work of like character shall be deemed an appurtenance of such mine; mill, smelter or works. Any such water may be used by those owning such mine or works, or employed thereat, for their domestic purposes.

SEC. 7. Any transfer of any such land, mine, mill, smelter, manufactory or other works of which water is an appurtenance, shall cause the right of employment of such water to pass to the vendee or transferee who shall be deemed the consumer of such water, and the date of the employment thereof shall not be taken or deemed changed by reason of such transfer.

SEC. 8. Except when expressly authorized or required by law, it shall be unlawful for any consumer or user of water to transfer, lease or assign, or bargain for the sale, lease or assignment of any of the water to the employment of which he is entitled, or any right which by virtue of his employment of water he may have acquired, or to receive from any other person any money or other valuable thing whatsoever as compensation or consideration for the rotation or prorating of water, or any agreement on his part to rotate or prorate water.

SEC. 9. Any person so transferring, selling, leasing, assigning or so bargaining with reference to the transfer, sale, lease or assignment of any such water or any right he may have acquired to the use thereof, and any person receiving any money or other valuable thing whatsoever in consideration of the prorating or rotating of water, or in consideration of his agreement to prorate or rotate water, shall be deemed and taken to have abandoned all right to the use or enjoyment of such water; *Provided, however,* Such abandonment shall not operate to the prejudice of the rights of any mortgagee, encumbrancer or equitable owner of the lands, mine or mill, smelter, manufactory or other works to which such water is appurtenant.

SEC. 10. If any person having procured water to be delivered to him or turned into any ditch, conduit, lateral, sublateral or other works wherefrom he is using or wont to use water, by pretense that he or other persons are entitled thereto or require the same for domestic uses, shall afterwards devote the said waters or suffer the same to flow to other than domestic uses, to the injury of others having a prior right to enjoy such waters, such person so offending shall be deemed guilty of a misdemeanor and on conviction thereof shall pay a fine of not less than ten dollars and not exceeding one hundred dollars, in the discretion of the Court wherein conviction is had.

Sections 11, 12 and 13 are the same as sections 2, 3 and 4 of Article I. of the Majority Report.

SEC. 14. Save for supplying the inhabitants of a city or town, water shall not during the irrigation season, be turned into or suffered to flow in any open ditch, conduit or lateral for supplying domestic uses solely, when to permit such flow of water for domestic uses solely will result in unreasonable and disproportionate waste from seepage or evaporation.

Section 15 same as section 7 of Article I. of the Majority Report.

SEC. 16. The authorities of any city or town or any corporation organized solely for supplying the same or the inhabitants thereof with water for domestic or sanitary purposes or other purposes whatsoever, or any corporation organized for constructing, maintaining and operating a railway as a common carrier, or for constructing, maintaining and operating any public grist mill, or any public mill or other works for the retention or treatment of gold or silver bearing ores or other ores, for all who may resort thereto, may, whenever it shall be necessary for the purpose of such corporation to take, appropriate or damage the works of any person or corporation constructed or used for the diversion, retention or storage of water, or to acquire the right of carriage of water by any such person or corporation enjoyed, or the right to the use and enjoyment of the water thereby diverted, conveyed or stored to which any such person or corporation or any other person may be entitled, or any part thereof, or to take and appropriate the waters of natural streams or others sources of supply in the State to the injury or damage of any appropriator of the waters of such natural stream or other source of supply, and the compensation to be paid for or in respect of the works and the rights or priorities so sought to be appropriated, acquired or damaged in effecting the right of carriage of such waters and the application thereof to



the uses of such city or town, or of such common carrier or such public mill cannot be agreed upon between such city, town or other corporation, and the owners of the properties and those entitled to the rights so sought to be taken or damaged, or the owners of such works or those entitled to the enjoyment of the right of carriage and the right of employment of the waters diverted, conveyed or stored by means of such works, or the persons or corporations entitled to the carriage or employment of the waters of such stream, or any of them are or is incapable of consenting, or the name or the residence of any such person be unknown or any such owner or person entitled to the enjoyment of the right of carriage or the right of employment of such water is a non-resident of the State or cannot be found, it shall be lawful for such city, town or other corporation to cause the compensation and damages in that behalf payable to be ascertained in the manner prescribed by the laws regulating the exercise of the right of eminent domain, and every such city, town or corporation shall be entitled to the same orders, rules and other proceedings in the same case and of like effect as may be prescribed in such law.

Sections 17 to 24, inclusive, are the same as sections 9 to 16, inclusive, of Article I. of the Majority Report.

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### ARTICLE III.

OF ACQUIRING LANDS FOR THE SITE AND WAY OF WORKS FOR  
THE DIVERSION, CONVEYANCE OR STORAGE OF WATER.

Sections 1 to 6, inclusive, are the same as Sections 1 to 6, inclusive, of Article III. of the Majority Report.

Section 7 is the same as Section 8, of Article III. of the Majority Report.



## ARTICLE IV.

OF THE CONSTRUCTION AND MAINTENANCE OF WORKS FOR THE  
DIVERSION, CONVEYANCE AND STORAGE OF WATER.

Sections 1 to 11, inclusive, are the same as sections 1 to 11, inclusive, of Article IV. of the Majority Report.

SEC. 12. If the proprietors of any ditch, conduit or other works for diverting the water of any natural stream, shall refuse or fail to erect at or near the head of such ditch, conduit or other works the head-gate required by this act, or to maintain the same in good order, as hereby required, the Water Commissioner of the district wherein such ditch, conduit or other works may be situate, shall, whenever necessary in order to the distribution of the waters of the district in conformity with the Statutes, exclude the water of such stream from such ditch, conduit or other works by filling such ditch, conduit or other works at or near the head thereof, or by cutting the banks thereof, or in such other way as to him may seem effective, having due regard to the cost thereof, and the reasonable cost of such filling or other work shall be paid by the Board of Commissioners of the county wherein the head of such ditch, conduit or other work may be situate, and may together with a reasonable attorney's fee, to be fixed by the Court, be recovered by such county in any Court of competent jurisdiction, and the judgment of the Court shall be a lien upon and against such ditch, conduit or other works and the appurtenances thereof, and all right of the proprietors thereof to the enjoyment of the right of carriage of the waters diverted or conveyed thereby, and shall direct the sale of such ditch, conduit or other works, and the right of the proprietors aforesaid in satisfaction thereof, and such judgment may be enforced by special execution or other proper process. No such sale shall divest or impair the right of any consumer of water diverted, or conveyed by means of such ditch, conduit or other works, but the purchaser at such sale shall be entitled to all lawful fees and other sums

of money payable by the consumers of such water in respect to the carriage thereof by means of such works. Every such sale shall be made as a sale of real estate, and redemption therefrom may be made in the manner provided by law in case of land sold on execution. Such proprietors so in default shall be liable for all injury and damages occasioned any consumer of water lawfully entitled thereto from such ditch, conduit or other works, by the willful or negligent failure of such proprietors to comply with the provisions of this act; and if any person, without first constructing the head-gate therein, as required by this act, to the satisfaction of the Water Commissioner, shall open any such ditch, conduit or other works after the same hath been filled by the Water Commissioner pursuant hereto, or shall repair or replace the bank thereof, where the same hath been cut or opened by the Water Commissioner, or turn the water into such ditch, conduit or other works after the same hath been excluded therefrom by the Water Commissioner pursuant hereto, or having control of such ditch or conduit, shall knowingly permit water to flow therein after the same hath been closed or the water excluded therefrom by the Water Commissioner pursuant hereto, every such person so offending shall be deemed guilty of a misdemeanor, and shall be fined in any sum not exceeding three hundred dollars, or imprisoned in the county jail not exceeding six months, or punished by both such fine and imprisonment, in the discretion of the Court wherein conviction is had.

Sections 13 to 15, inclusive, are the same as sections 13 to 15, inclusive, of Article IV of the Majority Report.

SEC. 16. The proprietors of every ditch, conduit or other works for conveying, retaining or storing water shall permit the State Engineer, or any person appointed for the purpose by the State Engineer, or by order of the District Court, whereunto by this act is committed juris-

diction for settling and adjudicating the rights and priorities among the appropriators of water in the Water Division, to at any time measure and rate such ditch, canal or other works. Every such order of appointment shall specify the ditch, conduit, reservoir or other works to be measured or rated, and the times within which such measurement may be made and the name of the person appointed, and shall be certified under the seal of the State Engineer, or the seal of such District Court. Whenever there shall be presented to the Water Commissioner of any Water District the order of the State Engineer or of any District Court, duly certified as in this section above provided, directing the measuring and rating of any ditch, conduit or other works in his district, or whenever the proprietors of any such ditch, conduit or other works shall request of any Water Commissioner permission to fill such works for the purpose of measuring and rating the same in pursuance of the law, such Water Commissioner, notwithstanding anything in this act contained, shall cause or permit the head-gate of the ditch, conduit, reservoir or other works to be raised, and such ditch, conduit, reservoir or other works to be filled, and so remain filled for a length of time sufficient to conveniently measure and rate the same; *Provided, however,* That the Water Commissioner shall not cause such works to be filled at request of the proprietors thereof, without the order of the State Engineer or the District Court aforesaid, when it shall seem to him unnecessarily injurious to others to comply with such request. The Superintendent and manager of such works shall always, on request, to the best of his ability, render assistance to such person named in such order of the State Engineer or such District Court, in and about the measuring and rating of such works, by admitting water into such ditch, conduit or other works to the full capacity thereof, if practicable, or by discharging the water out of such reservoir or other works.



of storage, when the same can be conveniently done without material loss to the proprietor or others, and by all other means in his power.

Section 17 is the same as Section 17 of Article IV. of the Majority Report.

Section 18 is the same as Section 20 of Article IV. of the Majority Report.

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## ARTICLE V.

OF THE ADMINISTRATION OF THE WATERS OF THE STATE AND  
THE OFFICERS APPOINTED THEREFOR.

Sections 1 to 19 inclusive are the same as Sections 1 to 19 inclusive of Article V. of the Majority Report.

SEC. 20. The Superintendent of Irrigation shall, within the Division for which he is appointed, have general control of the Water Commissioners within such Division, and shall, under the supervision of the State Engineer, execute the laws of the State relative to the distribution of water, in accordance with the rights and priorities of the carriers and consumers of water in his Division as the same are or may be established by judicial decrees; and perform such other duties as may be prescribed by law or by the State Engineer relative to the same matters.

Sections 21 to 33 inclusive are the same as Sections 21 to 33 inclusive of Article V. of the Majority Report.

SEC. 34. Whenever any decree shall be made in any of the District Courts, to which by this act is committed jurisdiction to settle the rights and priorities of right among the several appropriators of water in any Water Division, establishing the rights and priorities of carriers of water, and a certified copy thereof filed in the office of the State Engineer, as by this act provided, the State Engineer shall cause to be prepared and always to be kept in his office, a book to be entitled "A



register of priorities of right to the carriage of water for Water Division number -----," and shall cause to be entered therein and preserved all such copies of decrees, and shall as soon as may be thereafter, prepare from such decrees a table of the ditches, conduits, reservoirs and other works for the carriage of water within such Division, arranging the same in consecutive order according to the priorities of the respective rights of carriage of water within such division. Such table shall contain the following information arranged in separate columns: The name of the ditch, conduit, reservoir or other works; the Water District in which the same is situated; the stream or source wherefrom water is thereby diverted; the name of the person, association or corporation controlling the same; and the name and post-office address of the Superintendent upon whom, as provided by this act, notice in respect of the said works is to be served; the number of cubic feet of water per second, or of acre feet which the proprietors thereof are thereby entitled to divert, convey or store therein, (the extent of the right of carriage by means of the original construction, and that by means of each enlargement or at any time subsequently acquired, being stated separately and in their proper order and place, according to the dates of carriage thereof); the total number of cubic feet per second of water, the right of carriage of which was previously acquired to be conveyed in ditches or conduits, and the number of acre feet to be stored in reservoirs or other works in such Water Division, the number of cubic feet per second or acre feet of water, the right of carriage of which was previously acquired to be conveyed in ditches or conduits, or to be stored in reservoirs or other works in the Water District wherein such ditch, conduit, or other works may be situate; and such other and further information as to the State Engineer may seem useful or necessary to enable the Superintendents of Irrigation to make proper distribution of the waters of such Division according to such decree; and in case any decree shall

be afterwards entered amendatory or supplementary to such decree, or any decree establishing the right of any person or corporation not in such first decree named, to the carriage of water, or any decree establishing and limiting the amount of water to which any city or town or person or corporation supplying any city or town with water is entitled to divert, convey or store, he shall cause the substance thereof to be entered in such table in proper order and in the same manner aforesaid; and shall forthwith after the preparation of such table, or any amendment or supplement thereto, cause a copy thereof, certified under his seal of office, to be transmitted to the Superintendent of Irrigation for the proper Division within which such decree shall have been entered. He shall also in like manner and forthwith, or as soon as may be, after the receipt of the certified copy of any such decree, cause a like table to be prepared for each Water District within such Water Division, setting forth the same matters in respect to the several ditches, conduits, reservoirs and other works in such Water District, and arranging the said several rights of carriage of water in such table, set down, according to their several respective priorities of right in said Water District, and shall certify and transmit a copy thereof and of each amendment or supplement thereunto under his seal of office to the Water Commissioner of such Water District.

SEC. 35. The Superintendent of Irrigation of each Division and the Water Commissioner of each Water District shall carefully preserve the said tables and return the same to the State Engineer for correction whenever required by him, and always at the end of the irrigation season. No claim of priority of right to the carriage of water not set forth in the said tables shall be regarded by the Superintendent of Irrigation or Water Commissioner in the distribution of water until all persons appearing by such tables to be entitled to the carriage and use of water, shall have received the

full amount to which by such tables they severally appear entitled, and no other person shall be permitted to have, take or receive any water which might flow into the ditches, conduits or other works set down in such tables; *Provided, however,* That nothing herein contained shall be so construed as to require the Superintendent of Irrigation, or Water Commissioner, to deliver to, or suffer to flow into any ditch, conduit or other works, water manifestly in excess of the needs of the consumers of water by means of such works for the uses to which such water was applied in effecting the appropriation thereof, nor water to the carriage of which, by virtue of any agreement made in pursuance of the eleventh Article, the proprietors of any other works are entitled.

SEC. 36. They shall cause the waters of the several streams and sources of supply in their respective Divisions and Districts to be distributed among the several ditches, conduits and other works in the said Water Divisions and Districts, respectively, in accordance with the said table as nearly as may be, so that the appropriators of water, by means of such works, shall at all times receive the water, which, according to said table, may be diverted, conveyed or stored by means of such works to the extent to which such water may be needed by the consumers thereof for the uses to which such water was applied in effecting the appropriation thereof. And, whenever it shall appear to any Superintendent of Irrigation or Water Commissioner that there is flowing into any ditch, conduit, reservoir or other works water, the date of carriage of which is subsequent to the date of carriage of water by means of any other ditch, conduit, reservoir or other works, and that such ditch, conduit, reservoir or other works having a prior date of carriage of water, is not receiving the supply of water which, according to the said tables, ought to flow to the same, he shall at once cause the head-gate of such ditch, conduit, reservoir or other works having the subsequent date



of carriage, to be closed, or partially closed, so that a sufficient quantity may pass and flow to the ditch, conduit or other works having the priority of right thereto and to the amount to which, according to such table, the same is entitled; *Provided, however,* That the Superintendent of Irrigation or the Water Commissioner shall not cause any head-wates to be so closed, unless thereby water may be given to some ditch, conduit or other works having a priority of right; *And provided, further,* That nothing herein contained shall be so construed as to authorize or permit any Water Commissioner to distribute water to the ditches, conduits, reservoirs or other works of his District which, according to the table of the Superintendent of Irrigation, should flow to the ditches, conduits, reservoirs or other works of any other District enjoying a prior right, when directions in writing, touching such matter, shall have been given to him by the Superintendent of Irrigation.

Section 37 is the same as section 37 of Article V. of the Majority Report.

SEC. 38. The Superintendent of Irrigation shall file and carefully preserve all such reports, and forthwith after the receipt of any such report he shall carefully examine the same and shall therefrom ascertain what ditches, conduits or reservoirs in his Water Division are and what are not receiving the supply of water to which they are severally entitled; and whenever it shall appear therefrom, or otherwise to his satisfaction that any ditch, conduit, reservoir or other works within his Water Division is receiving any water to which, under the decree of the District Court, any other ditch, conduit or reservoir senior in priority thereto is entitled, he shall forthwith by telegram, if he shall deem it necessary, direct the Water Commissioner of the District wherein is situate such ditch, conduit, reservoir or other works so receiving water which should flow to a ditch senior in priority,



to close down the head-gate of such works so as to allow such water to flow to the ditches, conduits, reservoirs or other works entitled thereto, according to such decree; *Provided, however,* That the Superintendent of Irrigation shall not be required to direct the closing of any head-gate where water cannot thereby be given to works the carriers of water whereby have a priority of right thereto and the supply of which is insufficient to meet the needs of consumers of water thereunder for the uses to which such water was applied in effecting the appropriation thereof.

SEC. 39. Until decrees shall be rendered in pursuance of this Act for adjudicating the rights and priorities of carriers of water in any Water Division, distribution shall be made as nearly as may be according to the decrees heretofore rendered in the several Water Districts having regard to the dates of the several appropriations within the Division, and without regard to the date or order of the several appropriations in the Water Districts; *Provided, however,* That<sup>4</sup> nothing herein contained shall be deemed to validate any such decree, or make the same obligatory upon or against those entitled to the use of water in any Water District save that in respect whereof such decree was rendered; and where in any case the proprietors of any ditch, conduit or reservoir named in any such decree, shall, for the space of four years after the entry of such decree, have customarily failed to divert, convey or store any portion of the waters which by such decree they appear to have been entitled to divert, convey or store, the same shall be deemed to have been abandoned; and notwithstanding any such decree, such portion of any waters thereby awarded to the proprietors of any ditch, conduit, or reservoir, not used and enjoyed for the space of four years after the entry of such decree, shall be distributed to the subsequent carriers of water according to their several priorities of right as the same may have been or shall hereafter be established.

SEC. 40. Waters in any Water Division wherein, or in any Water District whereof, no decree hath been entered for settling the rights and priorities of the carriers of water, and waters, the right of carriage of which shall for any reason not have been embraced in any such decree, and waters, the right of carriage of which is subsequent to the rights of carriage in any Water Division last in priority in any such decree mentioned, shall be distributed by the Superintendents of Irrigation, subject to the orders of the State Engineer as the rights of the several carriers thereof may be ascertained and determined by the State Engineer from the best information accessible to him, reserving however, to every person aggrieved, the right to apply for relief to the District Court, whereunto by this Act, is committed jurisdiction for settling and adjudicating the rights and priorities of the appropriators of water in such Water Division.

Sections 41 to 47 inclusive are the same as sections 41 to 47 inclusive of Article V. of the Majority Report.

SEC. 48. Whenever it shall appear that the waters of any natural stream change so suddenly in volume that the Water Commissioner is unable to distribute the same to the different ditches or reservoirs conveying or storing the water of such stream, strictly in accordance with the decrees of the District Courts, to which jurisdiction to determine the several rights and priorities of the appropriators of water in the division is hereby given, and that in consequence of such inability more or less of the flood waters of such stream run to waste, the Superintendent of Irrigation may cause to be erected at the rating flume in any ditch, conduit or reservoir, upon the request and at the expense of the proprietors thereof, a clock-work register, such as that now used in securing a continuous record of the stage of water in the streams by the department of the State Engineer, or other device satisfactory to the State Engi-

neer, and may require the Water Commissioner to place on such register proper record sheets and renew the same each week and transmit the same to his office; and whenever in the distribution of water to any ditch, conduit or other works supplied with such a clock-work register at the rating flume thereof, either the Superintendent of Irrigation or Water Commissioner may deem it best so to do, he may authorize the proprietor of such works to raise the gates thereof and permit water to flow through the rating flume thereof to such a depth as he may designate, or he may direct such proprietor to close down the gates of such works so that the proper quantity of water should flow thereto, and such direction may be made by telegram if necessary; and if upon the return of such record sheet it shall appear that any such ditch, conduit or other works received more water than according to the decree of such District Court it was entitled, the Superintendent of Irrigation or the Water Commissioner shall cause the water flowing into such ditch to be correspondingly reduced during the succeeding week, or any part thereof, so that such ditch may receive, during such combined periods, as nearly as may be, the waters to which the carriers of water thereby are entitled; *Provided, however,* That if the proprietors of such works, or carriers of water thereby, shall refuse or fail to comply with the directions of the Water Commissioner or Superintendent of Irrigation in any matter touching the lowering of such gates, and the governing of the quantity of water admitted to such works, with reasonable promptness and exactness, the Water Commissioner or Superintendent of Irrigation shall thereafter refuse to the said proprietors the privilege theretofore granted, as herein prescribed; *And provided further,* That no such clock-work register or other such device shall be so used and depended upon until approved in writing by the State Engineer in a communication addressed to the Superintendent of Irrigation of the proper Water Division.



## ARTICLE VI.

PROVISIONS FOR ESTABLISHING THE RIGHTS AND PRIORITIES OF EMPLOYERS OF WATER AND PRESERVING RECORD EVIDENCE THEREOF.

SECTION I. The proprietor or proprietors of every ditch, conduit, reservoir or other works, any right or rights of carriage of water whereby shall have been determined and settled in pursuance of this act, by any decree of any District Court to which by this act is committed jurisdiction to determine and settle the rights and priorities of appropriators of water, shall within ninety days after the rendering of such decree prepare and cause to be subscribed by the President or other chief officer of the association or corporation, proprietors of such works, or the superintendent thereof, appointed in pursuance of this act, certificates setting forth: The name of such ditch, conduit, reservoir or other works; the Water District and the county or counties wherein the same is situated; the date and extent of each right of carriage of water by means of such works, determined in pursuance of the provisions of this act; the extent to which the water, the right of carriage of which was at any time acquired, is customarily diverted, conveyed or stored by means of such works and applied to beneficial uses, as nearly as may be; the name of each individual consumer or person entitled to the use of the water; the right of carriage of which, by means of such works, was at any time acquired, so far as known; the water to which each such consumer is entitled with the date of his employment of water and the extent thereof, specifying the same as nearly as may be in cubic feet per second or in acre feet, as may be the more reasonably consistent with the custom of distributing water by means of such works, and the period or periods within which or during which such consumer is entitled to the use of such water to the extent of his necessities therefor; the particular land, mine, mill,



manufactory or other works to which such consumer customarily applied or proposes to apply such water for the irrigation or operation thereof; the date and tenor or substance of any written, oral or implied agreement between those affecting the carriage of water by means of such works and the consumer of such water, affecting the date or extent of each right of employment of such water; and, if the water, the right of carriage of which by means of such works at any time acquired, is not customarily conveyed or stored to an extent sufficient and efficient for the uses of all those claiming to be entitled to the use of such water, the names of those entitled to enjoy the earliest rights of employment of the water conveyed or stored under any right of carriage of water means of such works, to the number whose needs for such water for the uses to which the same was applied in affecting an employment thereof, may with reasonable sufficiency and efficiency be supplied by the water which is customarily diverted, conveyed or stored under and by virtue of such right of carriage; and shall verify such certificates as true to his best knowledge, information and belief, and shall cause one such certificate, verified as aforesaid, to be filed with the Clerk of the District Court, whereunto by this act is committed jurisdiction to determine and settle the rights and priorities of appropriators of water within the division wherein such works may be situate, and shall preserve a duplicate copy thereof, which shall be kept at the office of the superintendent of such works, appointed in pursuance of this act, if he shall have an office, otherwise in his custody and at all times open to the inspection of any person interested as owner or encumbrancer of such works, or as consumer of the water diverted, conveyed or stored thereby, or as encumbrancer of the land or works to which such water is appurtenant.

SEC. 2. Any person or persons owning or controlling or claiming to own or control, any ditch, conduit,

reservoir or other works, by means of which water is diverted in whole or in part for hire, or to be applied to a beneficial use in whole or in part by others than those interested in the ownership of such works, who shall fail or refuse to comply with the provisions of section 1, of this article, as nearly as may be, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars and not more than one thousand dollars, in the discretion of the Court wherein conviction is had.

SEC. 3. At any time after the expiration of the period of ninety days next succeeding the rendering of any decree pursuant to Article VIII. of this act, any person claiming to be entitled to use or enjoy any part or share of the water, the right of carriage of which by means of any ditch, conduit, reservoir or other work shall have been determined in such decree, may exhibit in the District Court whereunto by this act is committed jurisdiction to settle and determine the rights and priorities of the appropriators of water in such Water Division, his complaint, praying the Court to establish his right and the rights of the several persons entitled to use and enjoy the water diverted, conveyed or stored by means of such works.

SEC. 4. Every such complaint shall set forth either in full or by reference to matters of record or documents on file in the office of the Clerk of the Court wherein such complaint is exhibited, the matter and facts, so far as known to the complainant, contained, or required to be contained, in the certificate prescribed by the first section of this article, together with the rights of the plaintiff to the use and enjoyment of any part or share of the waters diverted, conveyed or stored by means of such works under any right of carriage of water; the lands, mine, mill, manufactory or other works, to the irrigation or operation of which the water, the right of employment of which is enjoyed by the plaintiff, is

applied, or sought to be applied; the foundation of his claim thereto; the date and tenor of the agreement, if any, between himself and the carrier of such water to the use whereof such consumer claims to be entitled; and shall name as defendants thereto the proprietors of such works and all mortgagees and encumbrancers thereof, and the persons claiming to be entitled to use and enjoy the waters diverted, conveyed or stored by means of such works, and the mortgagees and encumbrancers of the lands or works to which the water diverted, conveyed or stored by means of such works, may be appurtenant, or, if such persons are very numerous, one or more of such persons shall be named as defendants, and all other persons claiming to be entitled to use or enjoy the waters diverted, conveyed or stored by means of such works, and all mortgagees and encumbrancers of the land or works to which such water is appurtenant, shall be made parties defendant by the title: "All those whom it may concern and consumers of water from -----," designating the name of the works.

SEC. 5. Upon the filing of such complaint the Clerk of the Court shall issue a summons as in other cases, save that the same shall be made returnable not less than thirty days thereafter, and the plaintiff in such action shall cause the same to be published for at least four weeks consecutively next before the return thereof, in at least one public newspaper published in each county wherein the said works are situate or wherein the waters therefrom have been theretofore, so far as known, customarily used; or in case there be no such newspaper published in any one of such counties, shall cause the said summons to be posted in at least five public places in such county for at least four weeks prior to the return day thereof.

SEC. 6. At any time within ten days after the return day of such summons, or afterward by leave of



the Court, any person claiming to be entitled to the use or enjoyment of water diverted, conveyed or stored by means of such works, or any mortgagee or encumbrancer of any lands or works to which such water is applied, may appear and be made party in the said cause either as plaintiff or defendant, setting forth either by supplementary complaint or by answer the claim made by him to the use or enjoyment of water diverted, conveyed or stored by means of such works, or the facts of his claim as mortgagee or encumbrancer of the land or works to the irrigation or operation of which any such water is applied or sought to be applied, and the same particulars touching such claim of right as above required in the complaint; and thereupon the Court shall appoint a Referee to attend at such times and in such places in the several counties as may be fixed in the order of the Court in that behalf, to hear and report to the Court all such testimony as may be produced before him touching: Each right of carriage of water by means of such works, as determined and settled in pursuance of Article VIII. of this act; the extent to which the water, the right of carriage of which was at any time acquired, is customarily diverted, conveyed or stored by means of such works and applied to beneficial uses; the names of the persons or corporations entitled to effect the carriage of water by means of such works; the name of each individual consumer or person entitled, or claiming to be entitled, to the employment of the water diverted, conveyed or stored under any right of carriage of water by means of such works; the water to which each such consumer is entitled, and the date of each right of employment of water and the extent thereof, and the period or periods within which or during which each consumer is entitled to the use of such water; the particular lands, mine or mill, manufactory or other works to which each such consumer applies or proposes to apply such water for the irrigation or operation thereof; the date and tenor or substance of any



written, oral or implied agreement between those effecting the carriage of water by means of such works and each consumer of such water, or the date and tenor or substance of any written, oral or implied agreement between any of the consumers of such water, affecting the date, or extent of any right of employment of such water from such works; or touching the number and names of those persons entitled to enjoy the earliest rights of employment of the water, the right of carriage of which was at any time acquired, the needs of whom for the uses to which such water was applied in effecting an appropriation thereof, may, with reasonable sufficiency and efficiency, be supplied by the water which, under and by virtue of such right of carriage of water, is customarily diverted, conveyed or stored by means of such works, and touching any abandonment or loss of the right of carriage of such water, or the right of employment of such water, and touching any other matter or thing which may be set down in the order of the Court as a proper matter of inquiry; *Provided*, That the decree had pursuant to the Eighth Article of this act establishing the rights and priorities of the several carriers of water in such Water Division, shall be deemed and taken to be conclusive, as between the proprietors of such works and those entitled to enjoy and use the waters therefrom, as to the maximum capacity of such works, unless it shall be made to appear that subsequent to the entry of such decree such works have been enlarged.

SEC. 7. Every such Referee shall, before entering upon the discharge of his duties under such appointment, file in the office of the Clerk of the Court the oath required by the eighth Article, and at the several times and places named in the order of the Court in that behalf, shall attend and hear and reduce to writing all testimony which may be offered by any person touching the matters named in the order of the Court in that be-

half, and shall in all respects touching such hearing proceed in manner as specified in the eighth Article for the government of the Referee therein mentioned, so far as such requirements can be made reasonably applicable.

SEC. 8. Any person claiming to be in any manner entitled to have, use or enjoy any part or share of the waters at any time diverted, conveyed or stored by means of such works, may in person or by counsel appear before the Referee and present testimony touching his claim in that behalf and the claim made by or in behalf of any other person, and cross-examine the witnesses produced by any other person, and object to any testimony offered by or in behalf of any other person.

SEC. 9. Upon the completion of the testimony before him the Referee shall file the depositions and all documentary evidence produced before him in the office of the Clerk of the Court, together with his report of his actings and doings as such Referee, and the Court or Judge thereof shall thereupon appoint a day when exceptions thereto will be heard, and at any time prior to the day so appointed, or afterward by leaf of the Court any person may file exceptions to any of the testimony heard before the Referee, or to any of the proceedings of the Referee in or about refusing to receive any testimony or denying any persons reasonable opportunity to be heard; and the Court, at the day appointed for hearing such exceptions, shall proceed in like manner as provided in the eight Article, touching the report of the Referee therein mentioned, and may, if he shall deem it necessary, order a further reference of the matter to the same or another Referee or hear further testimony in open Court upon some day proper and convenient, by him appointed for the purpose.

SEC. 10. Whenever any testimony shall be heard in open Court the same shall be at the time reduced to writing and certified by the Court, and together with the

report of the Referee shall be deemed and taken to be part of the record in the said cause.

SEC. 11. After the testimony shall have been completed and all exceptions to the report of the Referee determined, the Court shall appoint some convenient day, not less than thirty days thereafter, for final hearing, and shall cause a notice of such final hearing and the time and place appointed therefor to be published in at least one public newspaper in each County wherein the said works may be situate, or wherein any part of the waters thereby diverted, conveyed or stored may be customarily used.

SEC. 12. Upon final hearing, the Court shall by its decree ascertain and determine:

*First*—The name of each consumer or person entitled to apply to beneficial uses any of the water diverted, conveyed or stored under any right of carriage of water by means of such works, and the date of employment of water to the enjoyment of which any such person is entitled, together with the extent thereof, specifying the same as nearly as may be in cubic feet per second or in acre feet, as may be the more reasonably consistent with the custom of governing the distribution of water from such works, and designating the period or periods in each year within which or during which each consumer of water is entitled to the use of such water to the extent of his necessities therefor;

*Second*—The lands, mine, mill, factory or other works for the irrigation or operation of which the water employed by each of such persons is appurtenant, except as hereinafter provided in section thirteen of this Article;

*Third*—The names of those enjoying the earliest rights of employment of water diverted, conveyed or stored by means of such works, under and by virtue of such right of carriage of water, to the number whose needs



therefor, for the uses to which such water was applied in affecting an employment thereof, may, with reasonable efficiency and sufficiency, be supplied by the waters customarily conveyed or stored under such right of carriage, and who shall in times of scarcity suffer a proportional diminution of the water to which they are entitled.

SEC. 13. Nothing in this article contained shall be construed so as to require the Court to which by this act jurisdiction is committed, to determine and settle the rights and priorities of appropriators of water, to name the users of water in any city or town, or declare appurtenant to any lands or works the water applied to the uses of the inhabitants of any city or town or to limit the annual period during which consumers of water for irrigation shall be entitled to the use thereof, in the absence of any agreement to the contrary.

SEC. 14. Costs shall be adjudged in such cases as to the Court shall seem equitable.

SEC. 15. Appeals and writs of error shall lie for reviewing any such final decree in like manner as prescribed by the eighth article; and such appeals shall be prosecuted and proceeded in as therein prescribed.

SEC. 16. The Clerk of the Court wherein any such decree is rendered, shall, within thirty days after the rendering of such decree, cause a transcript or transcripts thereof to be made, and shall certify to the correctness of the same under his seal of office, and shall file for record one of such transcripts so certified with the County Clerk of each county wherein such works may be situate.

SEC. 17. The County Clerk of each county with whom shall be filed a transcript of any such decree, duly certified as above provided, shall be entitled to like fees for recording the same as for recording conveyances of land, and such fees shall be taxed as other costs in said



cause and shall be transmitted by the Clerk of said Court to the County Clerks wherein such transcripts are recorded.

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## ARTICLE VII.

OF WATER DIVISIONS AND WATER DISTRICTS.

Same as Article VII. of the Majority Report.

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## ARTICLE VIII.

OF THE ADJUDICATION OF RIGHTS AND PRIORITIES OF RIGHT TO  
DIVERT, CONVEY OR STORE WATER.

SECTION 1. Exclusive jurisdiction for the ascertainment and settlement of the several rights and priorities of right of persons interested, either as carrier or consumer, in water at any time appropriated, is hereby conferred upon the following courts within the several Water Divisions; that is to say: For the South Platte Division, upon the District Court of the County of Weld; for the Arkansas Division, upon the District Court of the County of Pueblo; for the Rio Grande Division, upon the District Court of the County of Conejos; for the San Juan Division, upon the District Court of the County of La Plata; for the Grand River Division, upon the District Court of the County of Garfield; for the White River Division, upon the District Court of the County of Rio Blanco; for the North Platte Division, upon the District Court of the County of Larimer; for the Republican Division, upon the District Court of the County of Kit Carson.

Sections 2 to 5 inclusive are the same as sections 2 to 5 inclusive of Article VIII. of the Majority Report.

SEC. 6. The proprietors of any ditch, conduit, reservoir or other works, constructed or used for the diversion, conveyance or storage of water, desiring to procure an adjudication of their rights to the carriage of water,

shall cause such works to be measured and rated, or the capacity thereof be estimated as required by this act, and the certificate of such measurement and rating or estimate of capacity to be approved by the State Engineer, and shall also procure a survey and map of such works to be made by some Assistant State Engineer or Deputy Irrigation Engineer, by him employed for that purpose. Every such Assistant State Engineer or Deputy Irrigation Engineer shall, at the time thereof, take in writing careful notes of every such survey by him made, showing in each case the name of such ditch, conduit, reservoir or other works, the name or names of the proprietors thereof, or of the association or corporation which is proprietor thereof, the date of such survey, the names of those assisting therein, and showing, either by reference to the public surveys, or where the said works are on unsurveyed lands, to conspicuous and permanent natural monuments, the place of the head of such ditch, conduit or other works, the stream or sources of supply wherefrom water is taken, the places of the head-gates and rating flume, the width, depth and grade of such ditch, or conduit, at so many places as may be necessary to reasonably ascertain the carrying capacity thereof, the greatest depth of water which can safely be carried at each of such places, and the form of the cross-sections to high-water mark, the courses and distances of such ditch, conduit or other works as surveyed, the several sections of land, according to the public surveys, over which the same is constructed, the location of every such reservoir and the exterior line thereof when filled to high-water mark, as nearly as may be, the capacity of such reservoir, a description of the embankment thereof, the places of inlet and outlet, and the wasteways therefrom, and any other matter or thing which the State Engineer may require to be set down in such notes of survey. Every such Assistant State Engineer or Deputy Irrigation Engineer, shall also prepare a plat or map of every such ditch, conduit, reservoir or other works, by him surveyed, as

aforesaid, and shall, as soon as may be after the completion thereof, transmit to the State Engineer a copy of said field notes and of the said map, with affixed thereto his affidavit that the survey therein represented was by him actually made in the field at the date set down therein ; that the same is a true copy of the field notes of such survey by him taken at the time, and that the places, courses, distances, grades and cross-sections of said ditch are truly set forth in the said notes, as he verily believes.

Sections 7 to 11, inclusive, are the same as Sections 7 to 11, inclusive, of Article VIII. of the Majority Report.

SEC. 12. Whenever the proprietors of any ditch, conduit, reservoir or other works for the diversion, conveyance or storing of water, or any employer of water diverted, conveyed or stored by means of such works, shall cause the same to be measured and rated by some Assistant State Engineer or Deputy Irrigation Engineer in pursuance hereof, and shall cause duplicates of the certificates of such measurement and rating verified by such Engineer, to be transmitted to the State Engineer, the State Engineer shall forthwith examine such certificate of measurement and rating, and if he shall approve the same shall cause one copy thereof certified by him under his seal of office to be transmitted to the Clerk of the District Court to which in pursuance of this act jurisdiction to adjudge and settle the rights and priorities of the several appropriators of water in such Water Division is committed, and the other thereof he shall file, record and carefully preserve in his office. If the State Engineer shall disapprove the measurement and rating of any ditch, conduit, reservoir or other works, he shall cause the fact of such disapproval to be certified to the superintendent of such ditch, conduit or other works, and shall direct further measurement and rating of such works, either by the same or other Assistant State Engi-



neer or Deputy Irrigation Engineer, as he may specify. Upon the completion of such second measurement and rating, the officer acting in that behalf shall make his certificate thereof, setting forth the same matters above prescribed, and shall transmit the same to the State Engineer, and the State Engineer shall take like proceedings in respect of such second certificate as prescribed in respect of the first. Whenever it shall appear to the satisfaction of the State Engineer that the waters of the stream or source of supply wherefrom any ditch, conduit or reservoir receives water, are so low at the head of the ditch, conduit or other works, that the same cannot be filled, or that for any reason the same cannot be measured and rated, as hereby required, the proprietors of such works may cause the same to be measured by not less than three disinterested persons (either Assistant State Engineers or Deputy Irrigation Engineers), and the capacity thereof estimated and certified by such three persons and their certificate of such measurement and estimate of the capacity of such works verified by them and approved by the State Engineer, shall be of like effect as the certificate of measurement and rating hereinabove first required; *Provided, however,* That the State Engineer shall not accept or approve any certificate of estimate as hereinabove provided without first ascertaining to his own satisfaction the impossibility of rating such ditch, conduit or other works.

SEC. 13. The proprietors of every ditch, conduit, reservoir or other works for the diversion, conveyance or storage of water within any Water Division, desiring the establishment of their right of carriage of water as herein provided shall file with the Clerk of the District Court, to which by this act is committed jurisdiction for ascertaining and settling the rights and priorities of the several carriers and consumers of water in such Water Division, a statement of their claim in that behalf, entitled to the proper Court and "In the matter of



the adjudication of the rights and priorities of the carriers of water in the ----- Water Division of the State of Colorado;" which statement shall set forth the names of the proprietors of such ditch, conduit or other works; the name of the superintendent thereof, appointed in pursuance of this act and the post-office address of such superintendent; all names by which such ditch, conduit, reservoir or other works hath theretofore been known, and the name by which the same is then and thereafter to be known; the time when such works were commenced and completed, fixing the day, month and year as near as may be; the time of commencement and completion of each enlargement or extension thereof; the purposes to which the water diverted, conveyed or stored by means of such works are applied, and the number of acres of land, if any, theretofore actually irrigated by water from such works as originally constructed, the increased area, if any, irrigated after each enlargement and the number of acres proposed to be irrigated therefrom; the particular months or parts of months in each year during which the employers of water by means of such works claim to be entitled to the use of the water diverted, conveyed or stored by means thereof, and the times when in each year, the proprietors of any such reservoir have theretofore customarily filled the same. Every such statement shall be subscribed by some one or more of the proprietors of such ditch, conduit or other works, or the superintendent or manager thereof.

SEC. 14. At any time after the first day of September, A. D. 1891, any person claiming to be interested in the question, as the owner of any ditch, conduit or reservoir, for the diversion, conveyance or storing of water in such Water Division, or as a consumer of water therefrom, may present to the District Court having jurisdiction in such Water Division pursuant hereto, his petition or application in writing, praying the Court

to proceed to an adjudication of the rights and priorities of right to the carriage of water between the several carriers of water in such division.

Section 15 is the same as section 15 of Article VIII. of the Majority Report, with the omission of the words "for irrigation."

SEC. 16. Every inhabitant of the State of Colorado, and all other persons in any manner interested as owner of any works in this State, for the diversion, conveyance or storing of water or as a carrier or user of the water diverted, conveyed or stored by means of such works, shall be deemed in law to have notice of such petition, and to be party thereto, and shall be entitled to attend either in person or by counsel before the Court or Judge, and be heard to show cause against such petition and touching the appointment of such Referee; as also either in person or by counsel, before the Referee appointed in pursuance hereof, and to produce evidence against the allowance of any right of carriage of water claimed by any other person or corporation in such Water Division, and shall be entitled to cross-examine the witnesses produced in behalf of any other person or corporation touching any right of carriage or right of appropriation of water, and, compliance with the provisions of this act, touching the survey, measurement, rating or estimate of any works by means whereof any right of carriage of water is claimed in his behalf, and touching the filing of the statement of claim in that behalf, being shown; shall be allowed to produce evidence before such Referee in support of such claim of a right of carriage of water, and shall be entitled to attend and be heard in such District Court and before such Referee at all proceedings had or taken in pursuance of this act.

SEC. 17. Upon the filing of such petition, the Court to which jurisdiction is hereby committed in that behalf, shall be deemed to be invested with jurisdiction to set-

tle and adjudicate the rights and priorities of the several carriers of water within such division, to divert, convey or store water, and such Court or the Judge thereof, at the time and place specified in the order in that behalf, if due service of the said citation hath not been had, shall continue the matter to another day and direct the issue of an *alias* citation or citations, as may be necessary. Further continuances of the matter may be made from time to time, and *pluries* citations issued until service be had upon all persons and corporations above specified to be served therewith. Whenever it shall appear to the Court that due publication of said citation and service thereof upon all persons and corporations who have filed with the Clerk of the Court their statement, as required by the thirteenth section of this article, hath been had, the Court or the Judge thereof shall hear all persons who may attend to oppose the said petition, and unless cause be shown to the contrary, appoint some fit and proper person as Referee to hear and report to the Court such evidence as may be produced before him touching the appropriations of water, and the rights and priorities of the several carriers of water in such Water Division, and shall by such order fix the time and places where such Referee shall attend in each Water District of such Division to hear evidence touching such appropriations and rights of carriage.

Sections 18 to 23 inclusive are the same as sections 18 to 23 inclusive of Article VIII. of the Majority Report.

SEC. 24. It shall be the duty of such attorney forthwith upon his appointment, to prepare from the records in the office of the Clerk of such Court, a table of the several ditches, conduits, reservoirs and other works in such Water Division, for the diversion, conveyance or storing of water, as may appear by the statements of the proprietors thereof filed in the office of such Clerk as required by this act, setting forth the names of the



proprietors thereof, respectively, the name of the superintendent thereof, and the several matters required to be set down in such statement, and the capacity of such works as shown by the certificate of measurement and rating thereof, on file in the office of the Clerk of such Court; and to otherwise familiarize himself with the said ditches, conduits, reservoirs and other works as fully may be. Whenever in any case it shall appear to such attorney that the proprietors of any such works claim by the statement filed with the Clerk of the Court in pursuance hereof, an excessive amount of water, or that any such statement is false in any particular, he shall use his best endeavors to procure and produce before the Referee at the proper time and place, evidence of the falsity of such claim in that behalf, and to that end may call upon the State Engineer to cause such works to be measured and rated or the capacity thereof estimated in the manner hereinbefore provided. He shall attend at all sittings of the Referee and cross examine on behalf of the public whenever it shall appear to him necessary all witnesses produced by any claimant touching his appropriation, and whenever it shall appear to him that any improper testimony is offered or produced before such Referee, shall at once object thereto and cause his objections in that behalf to be noted by the Referee, and shall in all things to the best of his ability cause the truth of the matter touching every such claim to be made to appear by proper testimony before the Referee. He shall attend before the District Court upon the hearing of the matter upon the report of the Referee, and there present and argue all objections by him made to any improper testimony presented before the Referee, and shall fully and fairly advise the Court to the best of his ability as to the rights of the several claimants, so that no injury be done to any claimant, nor any right to the carriage of an excessive amount of water or false date of priority be allowed to any claimant.



Section 25 is the same as section 25 of Article VIII. of the Majority Report.

SEC. 26. ' At the several times and places mentioned in such order or orders, the Referee so appointed shall attend and shall hear and reduce to writing all testimony which may be offered by any person authorized in pursuance hereof, touching the date of commencement and completion of each ditch, conduit, reservoir or other works theretofore constructed in such Water District, and each enlargement thereof, if any, and the amount of water diverted or stored by means of any such works, or any enlargement thereof and actually applied to beneficial uses, and the periods and times for which, during each year, the waters may have been used from such works, or any of them for irrigation or otherwise, and the lands irrigated thereby, or touching any other matter or thing which may tend to show the fact or date of the employment of water by any consumer, effecting the right of carriage of water by any carrier of water, the amount of such employment, the periods and times of the actual enjoyment and use of the water for irrigation or otherwise, or touching the failure of the employers of the water diverted, conveyed or stored by means of any ditch, conduit or other works, to apply the same to beneficial uses with reasonable continuity; *Provided, however,* That (save by leave of the Court or the Judge thereof) no evidence shall be given before any such Referee of the appropriation of waters by means of any ditch, conduit, reservoir or other works, unless the proprietors of such works shall, before the day first appointed for the sitting of the Referee in the Water District where in such works may be situate, have filed the statement required by the thirteenth section of this article, nor unless such proprietors shall, before the day named, have caused such works to be surveyed, measured and rated by the State Engineer or some Deputy Irrigation Engineer, or the capacity thereof to be estimated in pur-

suance hereof, nor unless the map and field notes of such survey and the certificate of such rating or estimate, with the approval of the State Engineer, shall, in pursuance hereof, be certified to and filed in the office of the Clerk of the District Court, upon which, by this act, jurisdiction is conferred to adjudicate the rights and priorities of the several appropriators of water within the Water Division wherein such works are situate, as by this act above required; *And, provided further,* That nothing herein contained shall be construed as requiring the Court to disregard the claims of any person or corporation having in progress any ditch, conduit or other works for the appropriation of water not then completed, or whereby the waters have not theretofore been appropriated to the full capacity of such works, but the rights of all such persons shall be saved as provided in the thirty-fifth section of this article.

SEC. 27. Every such Referee shall have power to administer oaths and issue subpœnas for witnesses and subpœnoes *duces tecum*, which subpœnas may be served by any person whomsoever, and may require the witness to appear at any place appointed by the order of the District Court for the attendance of such Referee and at such day and hour as may be named therein. He shall proceed in all respects in the examination of witnesses as is or may be provided by law in the case of the taking of the deposition of a resident witness in causes pending in the District Court; *Provided, however,* That unless any person attending, shall, touching any question or matter, make request to the contrary, the deposition of every witness shall be reduced to writing in the narrative form. The Referee shall receive all deeds, certificates and other documents which may be offered by any person and return the same with his report; or in case any person shall produce in evidence any book, or document in writing which shall not be under the control of the party desiring the benefit thereof, or which he shall

desire to retain in his own custody, such Referee shall make or cause to be made a true copy of the parts demanded, and shall certify the same and transmit such copies, together with the evidence concerning the same, as part of the evidence in the case. He shall also note at the proper place all objections which may be made by any person to any question propounded to any witness, or to any documentary evidence offered by any person, and certify the same in connection with such testimony. He shall also, whenever he shall deem it necessary for the ascertainment of the truth touching any point involved in the matter in question, examine any witness produced before him so as to ascertain and make clear as far as possible the date of commencement of each ditch, conduit, reservoir or other works, the original capacity thereof, the date of each enlargement and increased capacity thereby occasioned, the time spent in the construction of such works and each enlargement thereof, the amount of water actually carried in such ditch, conduit or other works, or stored in such reservoir as originally constructed, and after each enlargement, the time when the waters diverted thereby were appropriated and applied to beneficial uses, the nature of the work as to difficulty of construction, and all other facts which may show or tend to show the respective rights of the proprietors of the several ditches, conduits or other works in such Water Division in respect to the water diverted, conveyed or stored by such works or by any enlargement thereof, and their several priorities of right to the carriage of such water and the extent to which, and the periods during which, by means of such ditches, conduits, reservoirs or other works they are severally entitled to effect the carriage of such waters.

SEC. 28. Every such Referee shall give reasonable opportunity to all persons entitled to be heard before him, to attend and present testimony touching their several rights and priorities in respect of the carriage of



water within such Water Division. No testimony shall be heard or received touching any ditch, conduit or reservoir, or any appropriation claimed or any right to the carriage of water by means or in respect thereof, save in the Water District wherein is situate the head of such ditch or conduit, or the head of the ditch, or conduit supplying such reservoir, unless by special order of the Referee on cause shown and after notice to all persons interested in ascertaining or opposing such claim, which notice shall be in writing, and shall specify the day, hour and place when such testimony shall be produced, and shall be served at least six days prior to the time appointed for producing such testimony; but the Referee may, when the time limited for his attendance at any place named in the order of the Court shall expire without full hearing of all testimony desired to be produced before him by any person entitled to be heard, adjourn the further taking of testimony proposed to be offered, to any other time and place appointed in the order of the Court in that behalf for his attendance in the same Water District; and at such last named place may continue until all testimony shall be taken; or the Court, or the Judge thereof, may direct the further attendance of the Referee at the place of his attendance where such testimony was offered. The Referee shall cause all testimony heard by him to be taken down or copied in type-writing, and the depositions and other testimony touching each particular ditch, conduit, reservoir or other works, or the appropriation thereby to be filed and preserved as one file. He shall from time to time, as the hearing proceeds, make an index of the several ditches, conduits and other works and rights claimed, touching which testimony shall be offered, so that the same may be conveniently consulted and the testimony of any witness, touching any particular claim, readily found, and such depositions and other testimony and the index thereof he shall preserve and have with him at all times during



the hearing, and during all such times, and at all other convenient and reasonable times shall allow the same to be inspected and seen and copies or extracts thereof to be made by any person desiring so to do, and, upon the closing of the testimony, the Referee shall return the same with the index aforesaid and the report of his actings and doings in the premises into the office of the Clerk of the District Court wherein he was appointed as aforesaid, and shall notify the Judge of such Court, if the same be not in session, of the fact of the filing of his report.

Sections 29 to 33, inclusive, are the same as sections 29 to 33, inclusive, of Article VIII. of the Majority Report.

SEC. 34. Upon the return of such testimony, such Court or the Judge thereof, shall, by order of record, appoint a day for the final hearing of the matter of such petition, which shall be not less than thirty days subsequent to the filing of the report of the Referee. Any inhabitant of the State of Colorado, and every other person in any manner interested as owner, lessee or otherwise, of any works in this State for the diversion, conveyance, or storing of water, or as a carrier or consumer of water by means of any such works, may in person, or by counsel, file exceptions to the report of any such Referee, in whole or in part, or may complain to the Court of any omission, willful neglect or oppression on the part of the Referee, whereby such party shall have been aggrieved, either by refusal of the Referee to hear, or reduce to writing evidence offered, or by preventing reasonable opportunity to produce or offer such evidence, or by receiving improper evidence at the instance of any other party; and the State's Attorney for any such Water Division may interpose like exceptions. On the day so appointed for hearing the Court which shall then, if the same be not in one of the regular terms thereof, be deemed to be sitting in special term, shall hear any per-

son who may attend for that purpose, either in person or by counsel, touching the regularity of the proceedings of the Referee, and shall sustain or deny all exceptions filed to such report of the Referee or any part thereof, and if it shall appear that such Referee hath proceeded irregularly or in violation of the provisions of this act, or hath denied to any person any right secured or intended to be secured hereby in the matter of such hearing, shall appoint some other Referee, or refer the matter to the same Referee to hear such testimony as may be produced by any particular persons or corporations in such order named or touching any particular matter in such order named, or to permit cross examination of any witness or witnesses in such order mentioned, and fix the time and place for the attendance of such Referee, and of all persons in interest before him, and the time when he shall report, and shall adjourn the further hearing of such matter until the time so appointed for the report of such Referee, and upon such further report shall proceed in like manner as in the first instance until satisfied that by the testimony heard before such Referee the truth of the matter touching the several rights of carriage of water in such Water Division, has been ascertained; or, the Court may in its discretion, suffer or direct the examination of witnesses in open Court touching the right of carriage of water claimed by any person and the time and extent thereof, or the uses to which such water hath been applied, or any other matter or thing relevant to the adjudication of the rights and priority of right among the several carriers of water in such Water Division, and in lieu of adjourning the hearing of such matter, upon any second reference to the Referee, or the appointment of any new Referee, the Court may, in its discretion, proceed with the hearing, touching the rights of any person or corporation not affected by such second reference. And upon the conclusion of the hearing, after the final report of the Referee, last appointed in such

matter, and the testimony produced to the satisfaction of the Court, the Court shall make and enter its decree, setting fourth the date and extent of the waters lawfully diverted, conveyed or stored by means of each ditch, conduit, reservoir or other works, as originally constructed, and the date and extent of each right of carriage of water subsequently or by means of any subsequent enlargement thereof acquired, and the times during which the proprietors of said works or others are entitled to divert, convey or store the said waters, and the place of the diversion of such waters from the natural stream or other source of supply wherefrom the same are diverted; *Provided, however,* That no person shall in such decree be adjudged or decreed to be entitled to effect the carriage of any waters, the right of carriage of which, by the testimony heard before the Referee or the Court, as hereinbefore specified, shall appear to have been abandoned, or which shall not by such testimony appear to have been actually conveyed or stored by such person, or by others to whose right he hath succeeded, and employed by such persons or others using and enjoying the waters diverted, carried or stored by means of such works. In every such decree the date of carriage of water by means of each ditch or conduit, and the extent to which the proprietors thereof, or carriers of water thereby, are entitled, to divert and convey water, shall be designated in cubic feet per second of time, and the appropriation by means of every reservoir, according to the cubic contents thereof, to the extent to which the proprietors thereof are entitled to cause the same to be filled, and as to every such reservoir every such decree shall specify the number of times in each year, and the particular times of the year, and the months, so far as practicable, when the proprietors of such reservoir are entitled to fill the same. In every such decree the said several rights of carriage of water throughout such Water Division shall be arranged and numbered in consecutive



order, according to the dates of carriage of water, whether the right of carriage of water be made by the original construction of the ditch, conduit or other works, or by subsequent enlargement thereof, or otherwise, and without reference to the particular location of such works in the Division, or whether the same be taken from the main stream or the tributaries thereof.

SEC. 35. Whenever in such proceedings it shall be made to appear that any person, association or corporation hath theretofore commenced, and hath in progress any ditch, conduit or other works for the diversion, conveyance or storage of water, but hath not completed the same, or that if the same be completed the waters diverted thereby hath not been employed to the full capacity of such works, and that a reasonable time has not elapsed for the completion and utilization of such works, and for the full employment of the water diverted thereby, such decree shall be made with a saving of the rights of the proprietors of such works, and such proprietors may at any time afterwards, upon first procuring the survey and maps of such works and the certificate of rating or estimate of capacity hereinbefore required, and the approval thereof, and certified copies thereof, to be filed as hereinabove required, upon not less than thirty days' notice to the several proprietors of the ditches, conduits and other works named in such decree as entitled to divert, convey or store water in such Water Division under any right of carriage of such water acquired subsequent to the day alleged as the date of commencement of the works of such petitioner, their heirs or assigns, and due proof thereof made, apply to such District Court by petition to establish and settle by supplementary decree their rights in that behalf. Such notice may be made returnable either in term time or vacation. The Court or the Judge thereof, at the time appointed in such notice, shall either hear testimony in open Court or refer the matter of the taking of testimony



to a Referee appointed for that purpose with such particular directions as to him may seem fit, and upon full hearing of all parties, such Court, or the Judge thereof in vacation, may make such supplementary decree touching the rights of such petitioner and all others as right and justice may require. Such decree shall in no manner affect or impair the rights of any carrier of water not served with a notice of the petition as above required, and not appearing to oppose or contest the same. All testimony heard either before the Court or the Referee upon such petition shall be reduced to writing in the manner hereinbefore provided, and shall, if heard before the Court or Judge, be at the time reduced to writing, and certified by the Judge of the Court, and filed in the original cause in which such petition is presented, and like proceedings shall and may thereafter be had within the like limitation of time, for review or re-argument of such supplementary decree as herein provided; and an appeal may be taken and prosecuted for reviewing such decree in like manner, and under the same regulations as herein provided for appeals from such original decree.

Section 36 is the same as Section 36 of Article VIII. of the Majority Report.

Sections 37 and 38 are the same as Sections 37 and 38 of Article VIII. of the Majority Report, with the omission of the words "for irrigation."

Sections 39 and 40 are the same as Sections 39 and 40 of Article VIII. of the Majority Report.

Section 41 is the same as Section 41 of Article VIII. of the Majority Report, with the omission of the words "for irrigation."

Sections 42 to 48, inclusive, are the same as Sections 42 to 48, inclusive, of Article VIII. of the Majority Report.

SEC. 49. Nothing in this act, or in the decree rendered under the provisions hereof, shall prevent any person, association or corporation from instituting in the District Court having jurisdiction by this act, for the ascertainment and settlement of the rights and priorities of the several appropriators of water in any Water Divisions any suit or action hitherto allowed by the law for establishing any claim or right or priority to divert, convey or store water, at any time within four years after the entry of the final decree provided for in this act in the Water Division wherein such right may be claimed. No preliminary injunction shall issue in any case restraining the distribution of water in any Water Division wherein such final decree shall have been rendered, in conformity with the provisions of such decree, or which shall affect the distribution of water in any manner adversely to the rights of the parties thereto, as thereby determined and established.

SEC. 50. After the lapse of four years from the entry of such final decree in any Water Division, all persons who have not theretofore instituted an action or actions as provided in the last section, shall be forever barred from setting up or alleging any claim to the right of carriage of water in such Water Division, contrary to the effect of such decree, save as hereinafter provided in cases where the water the right of carriage of which has been acquired, shall not with reasonable continuity be applied to beneficial uses.

Sections 51 to 53, inclusive, are the same as sections 51 to 53, inclusive, of Article VIII. of the Majority Report.

SEC. 54. Any person, association or corporation claiming to be entitled to the enjoyment of the right of carriage of water in any Water Division by right acquired subsequent to the last right in priority of any carrier of water named in any such decree, (entered in pursuance of this Article), upon procuring the ditch,

conduit or other works by which such waters are appropriated, to be surveyed and the notes and map of such survey, as required by this Article, to be approved by the State Engineer, and upon also procuring such works to be measured and rated or the capacity thereof estimated in like manner as hereby required, and upon procuring, to be filed in the office of the Clerk of the District Court to which in pursuance of this act jurisdiction is committed, to adjudge and settle the rights and priorities of the several carriers and employers of the Water Division, a copy of the field notes and map of the survey of such works, and of the certificate of such measurement and rating or estimate of capacity by the State Engineer, as required by this Article, may apply by petition to such District Court, or the Judge thereof in vacation, to ascertain and settle by decree, his right and the right of all others in said Water Division similarly situated. Together with such petition the petitioner therein shall file with the Clerk of the Court a certificate from the State Engineer setting forth the names of all persons, associations and corporations who, since the date of priority awarded by the former decree, entered in such Water Division in pursuance of the thirty-fourth section of this Article, to the carrier of water last in priority in such decree named, have filed in the office of the State Engineer the map and statement required by the fourth Article. Upon the filing of such petition the Judge of the Court shall appoint a day when the same shall be heard, and the Clerk of the Court shall thereupon issue and transmit to the Water Commissioner of each Water District in such Division, a citation with copies thereof, which shall be served upon each carrier of water named in the list of carriers aforesaid, at least five days prior to the date appointed for such hearing, and thereupon the like proceedings shall be had touching the claim of the petitioner and all other carriers of water cited as aforesaid, as herein above prescribed by this Article, touch-



ing the original ascertainment of priorities; *Provided, however,* That the final decree upon such petition shall in no manner impeach or impair the right of any carrier of water named in such former decree, or any decree entered in the said Water Division, or any employer of the water by any such carrier diverted, conveyed or stored, to effect, respectively, the carriage of and use of the water, to the carriage whereof, by the terms of such decree such carrier shall appear to be entitled, unless it shall be made to appear and shall be adjudged that the right to the carriage of such waters as specified and awarded in the former decree was obtained by corruption or fraud, or hath been lost by failure to apply the same to beneficial uses with reasonable continuity, or otherwise, nor unless such carrier, his heirs, assigns, or those entitled under him, to the use of such waters, be cited and be made party to such petition, and such corruption or fraud or the failure to apply such waters to a beneficial use, or loss of the right to the carriage of such waters, be in such petition expressly averred.

Sections 55 and 56 are the same as sections 55 and 56 of Article VIII. of the Majority Report.

SEC. 57. The terms "Proprietor" or "Proprietors" as used in this Article shall be construed to include any person, association or corporation lawfully entitled to effect a carriage of water by means of any ditch, conduit, reservoir or other works.

SEC. 58. Every decree entered in pursuance of this Article, establishing the right of any person or corporation to divert, convey or store water, shall expressly provide that such person or corporation shall divert, convey or store such water only to the extent of the reasonable needs of the persons or corporation using the same for the purposes and uses by application to which such water was appropriated, and that save for the purpose of supplying cities and towns, water for domestic



purposes solely shall not be allowed to flow in any such works when such water is needed for direct irrigation.

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## ARTICLE IX.

### OF PUBLIC AND OTHER CARRIERS OF WATER.

SECTION I. It shall not be lawful for any person, association or corporation owning or controlling, or claiming to own or control, any ditch, conduit, reservoir or other works diverting, conveying or storing, or designed for the conveyance or storage of water when such water is diverted, conveyed or stored in whole or in part for hire, or to be applied to beneficial uses in whole or in part by others than those owning or claiming to own such works, or for any public carrier of water affecting the carriage of water by means of such works, to demand, bargain for, accept or receive from any person who may apply for water diverted, conveyed or stored by means of any such works for the purpose of applying the same to any beneficial use, any money or other valuable thing whatsoever, or any promise or agreement therefor, directly or indirectly, as royalty, bonus or premium, prerequisite or condition precedent to the right or privilege of procuring such water; but such water shall be conveyed or stored and delivered according to the right of the person entitled to the enjoyment thereof, upon the payment or tender of the charges for the carriage of water by means of such works fixed by the County Commissioners of the proper county, as is or may be provided by law. Any and all moneys and every valuable thing or consideration of whatsoever kind, which shall be so as aforesaid demanded, charged, bargained for, accepted, received or retained, contrary to the provisions of this section, shall be deemed and held an additional and corrupt rate, charge or consideration for the carriage of water intended to be furnished and delivered therefor, or because there-

of, and wholly extortionate and illegal, and when paid or delivered or surrendered, may be recovered back by the party or parties paying, delivering or surrendering the same from the party to whom or for whose use the same shall have been paid, delivered or surrendered, together with all costs of suit, including reasonable fees of attorneys of plaintiff, by proper action in any Court having jurisdiction.

SEC. 2. Every person, association or corporation owning or controlling, or claiming to own or control any ditch, conduit, reservoir or other works, as is mentioned in the first section Of this Article, who shall, after demand in writing made upon him for the supply or delivery from such works of water for application to any beneficial use, and after tender of the lawful rate of compensation for the carriage thereof in lawful money, demand, require, bargain for, accept, receive or retain from the party making such application any money or other thing of value, or any promise or contract, or any valuable consideration whatever, as such royalty, bonus, premium, prerequisite or condition precedent, as is by the provisions of the first section of this Article prohibited, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one hundred dollars, nor more than five thousand dollars, or imprisonment for a term of not less than three months nor more than one year, or both such fine and imprisonment, in the discretion of the Court.

SEC. 3. Every person, association or corporation owning or controlling, or claiming to own or control any ditch, conduit, reservoir or other works, such as is mentioned in the first section of this article, who shall, after demand in writing made upon him for the supply or delivery of water for application to any beneficial use, to be delivered from the ditch, conduit or reservoir owned, possessed or controlled by him, and after tender of the

lawful rate of compensation therefor in lawful money, refuse to furnish or carry and deliver from such ditch, conduit or reservoir or other works, any water so applied for, which water can be or may be, by use of reasonable diligence, in that behalf and within the safe carrying or storage capacity of such ditch, conduit, reservoir or other works, lawfully furnished and delivered, without infringement of the prior rights of other appropriators of such water, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, or imprisonment for a term of not less than three months nor more than one year, or both such fine and imprisonment in the discretion of the Court; *Provided, however,* That when any person, association or corporation hath heretofore constructed, or shall hereafter construct any ditch, canal, conduit, reservoir or other works for the conveying or storage of waters in part for the irrigation of land belonging to such person or corporation, or for the enjoyment of such waters in part by such person or corporation for any other purpose whatsoever, and in part for the use of other persons or corporations, nothing herein contained shall be so construed as to require such person or corporation to yield up or deliver to others, or to suffer to be used by others, the waters by him or it theretofore devoted to beneficial uses; and every such person or corporation shall be entitled to a reasonable time after the completion of his works, for enclosing, breaking up and otherwise preparing any lands by him or it proposed to be irrigated, or for erecting and equipping any works intended to be operated by means of such waters, or for preparing to use and enjoy in any other way whatsoever the waters so diverted for his or its purpose.

Sections 4, 5 and 6 are the same as Sections 4, 5 and 6 of Article IX. of the Majority Report.



SEC. 7. The proprietors of every reservoir for the collection or storage of water, which waters are stored in whole or in part for hire or to be applied to beneficial uses, in whole or in part, by others than the proprietors of such works, shall use reasonable diligence to keep the same at all times in good order and repair and ready to receive, hold and discharge the waters which, by means thereof, the proprietors of such reservoir are entitled to collect or store.

Section 8 is the same as Section 8 of Article IX. of the Majority Report.

SEC. 9. It shall be the duty of the Superintendent of such ditch, conduit, reservoir or other works to distribute the water, the right of carriage of which by means of such works was at any time acquired, to those entitled thereto, in accordance with the date and extent of their several rights of employment of such water, and in times of scarcity to apportion such water among those enjoying the same date of employment thereof, according to the extent of their several rights to the use thereof. The several consumers of water under any lateral, may at any time, by vote of a majority thereof, appoint a Superintendent to such lateral, who shall be charged with the distribution of the water allotted thereto by the Superintendent of the ditch, among those entitled to the use of such waters from such lateral. A meeting may at any time be called by not less than two of the consumers under such lateral, by notice in writing specifying the time, place and purpose thereof, for electing such Superintendent or removing him and appointing another. Such Superintendent shall hold his office during the pleasure of the consumers of water from such lateral, or a majority of them, and shall receive only such salary or compensation as they may appoint.

Section 10 is the same as Section 10 of Article IX. of the Majority Report.



\* SEC. 11. Any person having lawfully effected an employment of any of the water diverted, conveyed or stored under any right of carriage enjoyed by any public carrier of water, shall thereafter in every year, so long as he shall make payment of the lawful rate for the carriage of such water, be entitled to continue in the enjoyment of his right of employment of such water. If any consumer of water, diverted or stored by means of the works of any public carrier of water, shall fail to pay or tender the lawful rate chargeable for the carriage of all or any part of the water to the right of employment whereof he is entitled, such consumer of water shall not be entitled during the succeeding year, or thereafter, to the use of that portion of such water, upon which he shall have failed to pay or tender such charges for the carriage thereof, until such payment so in default shall be made, save by agreement to the contrary with the carrier of such water; such failure, however, shall not be taken or deemed to be an abandonment of the right of employment of such water or any part thereof, or work a forfeiture of such right; *Provided, however,* That if any consumer of water delivered, conveyed or stored by means of the works of any public carrier, shall fail for a period of more than three years consecutively, to pay or tender the lawful rate of carriage for any part of such water, such consumer shall be deemed to have abandoned and forfeited his right of employment to such part thereof as he shall have failed to pay the lawful charges of carriage upon, and such part of such waters shall be open to employment by any other person desiring to apply the same to any beneficial use under such works, and the carrier of such water shall have a claim against such consumer so in default, to the extent to which he may be in default, for the carriage of such water; *Provided, further,* That such carrier of water shall have no claim against such consumer for any part of the lawful rate of carriage, of so much of such water as

such consumer shall not have paid or tendered the charges of carriage upon, if such consumer shall notify such carrier that he has abandoned such water and his claim to the right to the use thereof.

SEC. 12. The proprietors of any ditch, conduit, reservoir or other works for the diversion, conveyance, retention or storage of water may procure the water to the right of carriage of which they are entitled, to be conveyed, stored and distributed through and from like works of any other carrier of water upon such terms as may be agreed upon between them, without in any manner impairing or affecting their rights or priorities in respect of such water; *Provided, however,* That thereby the water to which any other carrier of water or any consumer of water, by means of such works or any other works, may be entitled be not diminished; *And provided further,* That no such agreement shall be carried into effect until one original thereof shall be filed in the office of the State Engineer, and the State Engineer shall certify to the persons so agreeing his approval thereof. The State Engineer may at any time withdraw such approval and prohibit the further carrying into effect of such agreement, if it shall appear to him that proprietors of other works or consumers of waters therefrom are injured by reason of the carrying into effect of such agreement.

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## ARTICLE X.

PROVISIONS FOR REGULATING THE PROCEEDINGS OF THE BOARD OF COUNTY COMMISSIONERS IN DETERMINING THE RATES OF COMPENSATION TO BE CHARGED FOR THE CARRIAGE OF WATER.

SECTION 1. Whenever any person interested as carrier or consumer in the water appropriated by means of any ditch, conduit, reservoir or other works, shall present to the Board of Commissioners of the county wherein such person is entitled to effect the carriage or employ-

ment of such water, at any session thereof, regular or special, a petition praying the Board to proceed to fix reasonable maximum rates of compensation to be charged for the carriage of such water by means of such works, for use within such county; showing reasonable cause for such application, and verified by the affidavit of such petitioner, such Board of Commissioners shall examine the same, and, if from such petition, or from affidavits or testimony produced in support thereof, they shall be of the opinion that such application is made in good faith and that there is reasonable ground to believe that the rates charged, or proposed to be charged, for the carriage of such water are excessive, or that for any reason the rates to be charged for the carriage of such water ought to be fixed, they shall enter an order, not less than twenty days thereafter, nor later than the third day of the next regular session of such Board, when they will hear all parties interested as owner of such works, or as a carrier or consumer of the water diverted, conveyed or stored by means thereof; touching the rates to be charged for the carriage of such water by means of such works, and the Clerk of the Board shall cause such order to be published in at least one public newspaper published in such county, at least ten days prior to the time appointed for such hearing.

Sections 2 to 5, inclusive, are the same as Sections 2 to 5, inclusive, of Article X. of the Majority Report.

SEC. 6. When it shall appear to the Board that the foregoing requirements, tendering the publication, posting and service of such order have been complied with, the Board shall proceed to hear and determine such petition without unnecessary delay. Every person interested as a carrier of such water, or as a consumer of such water, within the said County wherein the proceedings are pending, shall be entitled to attend and be heard, either in person or by counsel, touching the said application, and to produce evidence touching any mat-



ter or thing whatsoever which may tend to show the reasonable rate of compensation which the carrier of such water should receive for the carriage thereof, the classes into which the consumers of such water should be divided, and the reasonable rate of compensation which the several classes of persons, consumers of such water, should pay for the carriage thereof.

SEC. 7. Upon hearing and consideration of the evidence which may be produced before them, as well as the arguments of counsel attending, if any, the said Board of Commissioners shall enter an order, naming the ditch, conduit, reservoir, or other works, by means of which the carriage of such water is effected, describing the same with reasonable certainty, and setting forth the date and extent of each right of carriage of water, the rates of carriage of which are in such order determined, and defining the several classes of persons into which the consumers of such water are divided, and fixing the reasonable maximum rates of compensation which may be charged the consumers in each of such classes for the carriage of such water.

SEC. 8. Every such order shall adjust such rates, saving in cases of agreement to the contrary, in accordance with the distance of carriage of such water and the period or periods in each year during which the several classes of consumers customarily receive such water, and so that for each mile or fraction thereof through which such water is conveyed a reasonable increment be made to the maximum rate to be charged the several classes of consumers of such water for the carriage thereof. Every such order shall define the several classes into which the consumers of water are grouped, either on the basis of their dates of employment of such water or on some other well defined basis. In any such classification of the consumers of such water, those consumers whose employment of water is limited to a number of acre feet per annum may be



classed separately from those entitled to use a given number of cubic feet of water per second at any and all times during the year when the same may be needed for the uses to which such water may be lawfully applied, and those consumers of water stored as well as conveyed may be classed separately from those consumers simply using water conveyed but not stored, and other classes may be made as right and justice may seem to require. Every such order shall be in force for the term of two years next thereafter ensuing, unless, upon like notice as herein required upon the original petition and due cause shown therefor, the same shall be changed by the Board of County Commissioners, and until other order made in the premises after the lapse of such period.

SEC. 9. If it shall appear to the Board that the rates theretofore customarily charged or proposed to be charged by the proprietors of such works, or others, for the carriage of water thereby, have not been nor are unreasonable or excessive, and that to prescribe or fix the maximum rate is unnecessary or inexpedient, the Board may dismiss the petition or, in their discretion, adjourn the matter to another day, and continuances of the hearing may be granted from day to day or for any time in the discretion of the Board.

Sections 10 to 15, inclusive, are the same as sections 10 to 15, inclusive, of Article X. of the Majority Report.

SEC. 16. If it shall appear to the Board upon such hearing that the rates theretofore customarily charged by the proprietors of such works, or proposed to be charged for the carriage of water thereby, are excessive and extortionate, the cost of such proceeding shall be taxed against the proprietors of such works. If it shall appear to the Board that such petition was presented without any good cause therefor, the costs shall be taxed against the petitioner. In other case the costs shall be divided as to the Board shall seem equitable. No party

shall be permitted to examine more than four witnesses to establish the same matter of fact.

SEC. 17. If either member of the Board of County Commissioners, wherein such petition is presented, be interested in the works named in such petition as proprietor or encumbrancer thereof, or be a consumer of water therefrom for any purpose whatsoever, he shall cause the fact of such interest to be suggested and entered of record, and thereupon an order shall be made changing the venue in such proceeding to some other county where no part of the ditch, conduit or other works named in such petition is situate, and where no water from such works is conveyed or stored for the use of any of the inhabitants of such county.

Section 18 is the same as section 18 of Article X. of the Majority Report.

SEC. 19. At the time of the entry of any such order for the change of venue of such petition, such Board of County Commissioners shall also, by order, fix a time not less than ten days thereafter when, at some convenient place in their county to be named in such order, depositions may be taken before some Justice of the Peace, Notary Public, or Clerk of the District Court, or County Court, in behalf of every person interested in the question of the reasonable maximum rates which ought to be charged for the carriage of water diverted, conveyed, or stored by means of such works, or any matter of fact bearing upon the question; and at the time and place named in such order and from thence from day to day, or as the convenience of the parties may require; the Justice of the Peace, Notary Public or other officer named shall attend at the place in such order mentioned, and take the depositions of all witnesses produced before him by any party for examination; and any party claiming to be interested in the controversy may attend and examine, or cross-examine, every such witness. Such depositions shall be reduced to writing

by, or under direction, of such officer, in the narrative form (save where, as to any particular matter, any party may request that the interrogatory and answer be set down), and, upon the completion of the examination of all witnesses produced, the same shall be certified to by the officer taking the same and transmitted to the Clerk of the Board of County Commissioners of the County to which the venue is changed. Every such deposition shall show and set forth in whose behalf the witnesses are severally produced, and the officer shall affix a memorandum subscribed by him, showing by whom the fees of such witnesses for their attendance, and his fees for the taking of such depositions, are paid and the amount of such fees.

Sections 20 and 21 are the same as Sections 20 and 21 of Article X. of the Majority Report.

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## ARTICLE XI.

### OF THE ROTATION OF WATER.

Same as Article XI. of the Majority Report.

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## ARTICLE XII.

### OF SUBTERRANEAN WATERS AND ARTESIAN WELLS.

SECTION I. Any person owning or controlling any tract or parcel of land shall be entitled to at any time, apply to beneficial uses upon such land the waters of any natural lake or pond having no natural outlet, situate upon such land, the rain and snow waters falling upon such land and any of the water theretofore lawfully used in the irrigation of any part of such land, which may have seeped, drained or discharged into any ravine or surface channel upon such land, and any of the water percolating in or through such land and not part of the water of any natural stream or well defined subterranean channel.



SEC. 2. Whenever the State Engineer shall have presented to him reasonable evidence that any person, such as mentioned in the preceding section, shall under a claim of using the waters therein mentioned be diverting, conveying or storing the water of any natural stream or well defined subterranean channel to the carriage or employment of which any other person is entitled, the State Engineer shall from the best information accessible to him, ascertain and determine what waters any such person is entitled to use and what not, and shall in writing direct the Superintendent of Irrigation of the proper division and the Water Commissioner of the proper District accordingly, reserving, however, to every person aggrieved the right to apply for relief to the District Court whereunto by this act is committed jurisdiction for settling and adjudicating the rights and priorities of the carriers and consumers of water in such Water Division.

Sections 3 to 12 inclusive are the same as sections 1 to 10 inclusive of Article XII. of the Majority report.

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### ARTICLE XIII.

OF UNLAWFUL INTERFERENCE WITH AND MALICIOUS INJURIES TO WORKS FOR THE DIVERSION, CONVEYANCE OR STORAGE OF WATER.

Same as Article XIII. of the Majority Report.

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### ARTICLE XIV.

OF THE DRAINAGE OF LANDS.

SEC. 1. The proprietor of any lands which have become saturated shall be entitled to excavate trenches, or to construct drains, or other works, for withdrawing water from such lands and conveying the same into any natural stream or water course.



Section 2 is the same as section 2 of Article XIV. of the Majority Report.

SEC. 3. Every such proprietor shall be entitled to have all such waters conveyed in the drains or works of others, or cause such works to be enlarged, by proceeding as provided, with reference to the carriage of water by means of the works of others, in the Third Article of this Act.

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## ARTICLE XV.

### OF THE INCORPORATION OF WATER DIVISIONS AND WATER DISTRICTS.

Sections 1 to 20, inclusive, are the same as sections 1 to 20, inclusive, of Article XV. of the Majority Report.

SEC. 21. Every such Board of Directors shall have power:

*First*—To adopt by-laws, not inconsistent with this act or any other law of the State of Colorado, for enforcing the economical use of water and preventing waste thereof.

*Second*—To erect, maintain and operate telephone lines or other means of speedy communication within such Water District for promoting speed and facility in communication between those controlling the waters of such District and those entitled to the enjoyment thereof, and to demand and receive reasonable rates and tolls for the use of such telephone lines or other means of communication; *Provided, howsoever*, That no compensation shall be exacted for the use thereof by the State Engineer, Superintendent of Irrigation, the Water Commissioner of the District or any assistants of said officers, or either of them, for transmitting any message relating to their official duties.

*Third*—To construct ditches, conduits, reservoirs or other works for diverting, conveying or storing water

for application to beneficial uses within such Water District.

*Fourth*—To purchase or take in the same manner and in pursuance of the Statutes regulating the exercise of the right of eminent domain, any ditch, conduit, reservoir or other works situate within such Water District and used for the diversion, conveyance or storage of water, together with the franchises and rights of the owners of such works and carriers of water by means thereof, whenever it shall appear to such Board of Directors that the owners of such works or the carriers of water thereby have, through negligence or otherwise, customarily or repeatedly failed to comply with the provisions of this act, or willfully or through negligence jeopardized the rights of the consumers of water conveyed or stored by means of such works, or that by reason of conflicts, disputes or continued difficulties between such owners or carriers and such consumers touching the rates of compensation to be charged for the carriage of such water, or any other matter relative to the carriage of such water, the public welfare is threatened or the equal rights of individuals or the general well-being of the State is infringed.

*Fifth*—To construct works for draining marshy or saturated lands and collecting waters therefrom and returning the same to the natural streams.

*Sixth*—To construct works for improving the natural streams within such Water District, confining the same to their channels and preventing the waste of the waters thereof.

*Seventh*—To lease, purchase or take, in pursuance of the Statutes regulating the right of eminent domain, the lands and other property necessary for the site of such ditches, reservoirs or other works, or for the line and stations of such telephone lines or other means of speedy

communication, and to sell and dispose of any such properties, or any materials, tools or supplies when the same shall be no longer needed.

*Eighth*—To prescribe, enforce and collect penalties, not exceeding a fine of three hundred dollars for any one offense, from all persons who shall violate any by-law made by such Board of Directors for prohibiting the waste of water or extravagance in the use thereof.

*Ninth*—To employ and discharge such servants as may be necessary for the purposes aforesaid, and such policemen as may be necessary for enforcing their by-laws, to prescribe their duties and powers and to fix their compensation.

*Tenth*—To prescribe reasonable and necessary by-laws, not inconsistent with this act or the laws of the State, for carrying into effect the powers aforesaid and regulating the exercise thereof, and for prescribing the time, manner and places of the election in such District, and the rate and manner of assessment and collection of the taxes to be levied in pursuance hereof.

*Eleventh*—To prescribe and enforce the collection of reasonable annual payments by the consumers of the water diverted, conveyed or stored by means of the works constructed, purchased or acquired by condemnation in pursuance of any of the powers hereinbefore granted; to so regulate such annual payments that the same shall be sufficient to meet the annual cost of operation and the maintenance of such works and to pay the annual interest and extinguish by means of a sinking fund, if necessary, the principal of any loan made for the purchase or construction of any such works within the period for which said loan is contracted, which shall not exceed twenty-five years.

*Twelfth*—To borrow money and issue its bonds payable at such time as the Board of Directors may by resolution prescribe, and bearing interest at not exceeding



six per cent. per annum, payable semi-annually, at such place as may be prescribed in such bonds; and to use such money for effecting the construction of the works, or the purchase, lease or condemnation of the properties or rights lawfully constructed or acquired under the powers hereinbefore prescribed; and to levy and collect in each year, upon all real and personal property within such Water District a tax not exceeding-----mills upon each dollar of assessed valuation thereof, for use in the purchase of materials, the employment of the servants and policemen, the payment of the annual interest and extinguishment by means of a sinking fund, if necessary, of the principal of any lawful loans made as hereinbefore prescribed, upon which the annual payments prescribed in section 12 hereof shall be insufficient or for any reason inadequate to meet the purposes to which the same are therein required to be applied; *Provided, however,* That no such loans shall be contracted save by by-law irrevocable until the indebtedness shall have been fully paid or discharged, specifying the purposes to which such particular fund so to be borrowed shall be applied, and that no such indebtedness shall be contracted beyond the limit upon which a tax of       mills, levied upon each dollar of the assessed valuation of the real and personal property within the district, will pay the annual interest and be sufficient to extinguish the principal within a period of twenty years; *And, provided further,* That no such loan shall be consummated until at some election of a Director in such Water District two-thirds of the electors of such Water District, who have in the preceding year paid a property tax in some one of the counties extending into such Water District, shall vote in favor thereof.

Sections 22 to 26 inclusive, are the same as sections 22 to 26 inclusive, of Article XV. of the Majority Report.



SEC. 27. Every such Water Division becoming incorporated pursuant to the foregoing section, shall be governed by a Board of Directors and the same officers, of the same number and title as of the Water District, who shall be first appointed and afterwards elected, and vacancies, in the number of which Directors, shall be filled in the same manner as hereinbefore provided touching the Water Districts. Said Board of Directors shall have the same powers as herein prescribed for the Board of Directors of the Water Districts, and the by-laws thereof may be enforced in the same manner. Wherever, in any Water Division, persons or corporations are entitled to effect the carriage or employment of water by means of works situated in the lower portions of the Division, or at great distances from the sources of supply, and such persons or corporations enjoy an early date of appropriation of water, and where, in order that water may flow to such persons or corporations, great waste is occasioned and the efficiency of the streams of the Division is thereby greatly diminished, the Directors of the Water Division may agree with such carriers and consumers of water that they abandon their rights to the carriage or use of such water and take a new date of carriage and employment therefor, subsequent to the date of appropriation enjoyed by those persons higher up upon the streams.

Section 28 same as section 28 of Article XV. of the Majority Report.

SEC. 29. The Board of Directors of such Water Division may enact reasonable by-laws not in conflict with this act or the laws of the State, regulating the manner of submitting the question of such purchase to the electors of such Water Division, and for ascertaining and certifying the result of such submission. Every such agreement touching the compensation to be paid for any right of carriage or right of employment of water shall specify and set down the maximum price to be

paid for the rights of carriage of water by means of any ditch, conduit or other works, or the rights of employment of the water diverted thereby, which are proposed to be obtained, whether a loan is proposed to be made therefor or whether the amount is to be raised by taxation, the period of such loan, if any, and the rate of interest to be paid thereon.

Section 30 same as section 30 of Article XV. of the Majority Report.

SEC. 31. Whenever the Board of Directors of any Water Division shall propose to agree with those entitled to effect the carriage or enjoy the use of water, as hereinbefore provided, they shall prepare and cause to be filed in the office of the State Engineer a certificate of their intention in that behalf, and set forth the name of the ditch, conduit or other works by means of which the rights proposed to be secured are enjoyed, and in case such abandonment of the rights of such carriers and consumers of water be consummated, either by mutual agreement or condemnation in pursuance hereof, such carriers and consumers shall be entitled to divert, convey, store and use water to the extent enjoyed previous to such abandonment, but the date of carriage thereof shall be as of and from the date of filing such certificate by the Board of Directors of such Water Division, and all rights of employment and rights of carriage acquired after the date of filing such certificate shall be subject to the rights of the carriers and consumers of water by means of such ditches, conduits or other works; provided such purchase be consummated within two years after the filing of such certificate.

Sections 32 to 40, inclusive, are the same as sections 33 to 41, inclusive, of Article XV. of the Majority Report.

## ARTICLE XVI.

OF PROVISIONS FOR THE PUNISHMENT OF OFFENSES PRESCRIBED  
BY THIS ACT.

Same as Article XVI. of the Majority Report.



















